

Amendment No. 1 to SB1360

Johnson  
Signature of Sponsor

**AMEND Senate Bill No. 1360**

**House Bill No. 1242\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 47, is amended by adding the following new chapter thereto:

**47-51-101.** This chapter shall be known and may be cited as the “Tennessee Lawsuit Funder Consumer Protection Act.”

**47-51-102.** As used in this chapter, unless the context requires otherwise:

(1) “Consumer” means any natural person who resides, is present or is domiciled in Tennessee, or who is or may become a plaintiff or complainant in a dispute in Tennessee;

(2) “Lawsuit funder” means a person, entity or partnership engaged in the business of lawsuit funding;

(3) “Lawsuit funding” or “lawsuit funding transaction” means a non-recourse transaction in which funding is provided to a consumer in return for a consumer assigning to the funder a contingent right to receive an amount of the potential proceeds of the consumer’s judgment, award, settlement or verdict obtained with respect to the consumer’s legal claim. “Lawsuit funding” and “lawsuit funding transaction” shall not include:

(A) Legal services provided on a contingency fee basis, or advanced legal costs, where such services or costs are provided to or on behalf of a consumer by an attorney representing the consumer in the dispute and in accordance with the Tennessee Rules of Professional Conduct; or

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(B) A “commercial tort claim” as defined by § 47-9-102.

**47-51-103.** A lawsuit funder shall fulfill each of the following requirements when engaged in lawsuit funding:

(a) The terms of every lawsuit funding transaction shall be set forth in a written contract that is completely filled-in with no incomplete sections when the contract is offered or presented to the consumer;

(b) The lawsuit funding contract shall contain a right of rescission, allowing the consumer to cancel the lawsuit funding contract without penalty or further obligation if, within five (5) business days following the consumer’s receipt of the funds or goods, or execution of the lawsuit funding contract, whichever is later, the consumer gives notice of the rescission and returns any money or goods already provided to the consumer by the lawsuit funder;

(c) The lawsuit funding contract shall contain a written acknowledgment by the consumer of whether the consumer is represented by an attorney in the dispute;

(d) If the consumer acknowledges that the consumer is represented by an attorney in the dispute, the lawsuit funding contract shall include a written acknowledgement executed by the consumer’s attorney in the dispute in which the attorney acknowledges all of the following:

(1) The attorney has had the opportunity to review the lawsuit funding contract on behalf of the consumer;

(2) Whether the attorney is being paid on a contingency basis pursuant to a written fee agreement;

(3) That all proceeds of the legal claim shall be disbursed by either the trust account of the attorney representing the consumer in the dispute or a settlement fund established to receive the proceeds of the dispute from the defendant on behalf of the consumer;

(4) The attorney is representing the consumer with regard to the dispute that is the subject of the lawsuit funding contract; and

(5) The attorney has neither received nor paid a referral fee or any other consideration from or to the lawsuit funder, nor will the attorney in the future.

(e) In the event that proceeds are paid into a settlement fund or trust, the lawsuit funder shall notify the administrator of the fund or trust of any outstanding liens arising from the lawsuit funding contract.

**47-51-104.** A lawsuit funder shall not:

(a) 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 a lawsuit funder;

(b) 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;

(c) Advertise false or misleading information regarding its products or services;

(d) Refer a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees; provided, however, if a consumer does not have legal representation, the provider shall refer the consumer to a local or state bar referral service operated by a bar association or a non-profit organization;

(e) Fail to promptly supply copies of any and all complete lawsuit funding contracts to the consumer and the attorney representing the consumer in the dispute;

(f) Attempt to obtain a waiver of any remedy, including but not limited to, compensatory, statutory, or punitive damages, that the consumer might otherwise have;

(g) Attempt to effect arbitration or otherwise effect waiver of a consumer's right to trial by jury;

(h) Offer or provide legal advice to the consumer regarding the lawsuit funding or the underlying dispute; or

(i) Assign a lawsuit funding contract in whole or part.

**47-51-105.** Lawsuit funding contracts shall contain the disclosures specified in this section, which shall constitute material terms of the lawsuit funding contract. Unless otherwise specified, the disclosures shall be typed in at least twelve (12) point bold type and be placed clearly and conspicuously within the lawsuit funding contract, as follows:

(a) On the front page under appropriate headings in not less than fourteen (14) point font, language specifying:

(1) The total amount of the lawsuit funding to be provided to the consumer by lawsuit funder as part of the lawsuit funding transaction;

(2) The maximum amount the consumer can be required to provide the lawsuit funder, including but not be limited to, all fees, charges, interest or other consideration, under the terms of the lawsuit funding contract;

(3) The maximum annual percentage rate, which shall include, but not be limited to, all fees, charges, interest or other consideration received by a lawsuit funder in consideration for lawsuit funding, the consumer may be charged for the lawsuit funding under the terms of the lawsuit funding contract; and

(4) The following:

**Consumer's Right to Cancellation:** You may cancel this contract without penalty or further obligation within five (5) business days from the date you signed this contract or received funding from [insert name of the lawsuit funder] by: returning the funds to [insert name, office address and office hours of the lawsuit funder] or by U.S. mail, [insert name and mailing address of lawsuit funder]. For purposes of the return deadline by U.S. mail, the postmark date on the returned funds or, if mailed by registered or certified mail, the date of the return receipt requested shall be considered the date of return;

(b) Within the body of the lawsuit funding contract, the following:

**The lawsuit funder, agrees that it has no right to and will not make any decisions about the conduct of your lawsuit or dispute and that the right to make those decisions remains solely with you and your attorney;**

(c) Within the body of the lawsuit funding contract, in all capital letters contained within a box the following:

**IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO SATISFY THE PORTION ASSIGNED TO [INSERT NAME OF THE LAWSUIT FUNDER] IN FULL, YOU WILL NOT OWE [INSERT NAME OF THE LAWSUIT FUNDER] ANYTHING IN EXCESS OF YOUR RECOVERY.**

(d) Located immediately above the place on the lawsuit funding contract where the consumer's signature is required, the lawsuit funding contract shall include in bold fourteen (14) point font the following:

**Do not sign this contract before you read it completely. If this contract contains any incomplete sections, you are entitled to a completely filled-in copy of the contract prior to signing it. Before you sign this contract, you should obtain the advice of an attorney. Depending on the circumstances you may want to consult a tax advisor, a financial professional or an accountant.**

**47-51-106.** Lawsuit funding contracts and application materials shall be subject to civil discovery.

**47-51-107.** Any violation of this chapter shall make the lawsuit funding contract unenforceable by the lawsuit funder or any successor-in-interest to the lawsuit funding contract.

**47-51-108.** The attorney general and reporter shall have the power and authority to enforce this chapter in his or her discretion. Any violation of this chapter may be enforced by the attorney general and reporter pursuant to § 47-18-108. Nothing in this chapter shall be construed to limit the exercise of powers or the performance of the duties of the attorney general and reporter, which he or she is otherwise authorized or required to exercise or perform by law.

**47-51-109.**

(a) The contingent right to receive an amount of the potential proceeds of a legal claim may be assigned by a consumer and that assignment is valid for the purposes of obtaining funding from a lawsuit funder.

(b) Any lien, subrogation interest or right of reimbursement against the consumer's legal claim shall take priority over any lien, subrogation interest or right of reimbursement of the lawsuit funder.

**47-51-110.** Lawsuit funding transactions shall not exceed a term of three (3) years and are limited to a fee, which shall be calculated to include any underwriting and organization fees,

interest and any other charges, fees or consideration, not to exceed an annual percentage rate of twenty-five percent (25%).

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

SECTION 3. This act shall take effect July 1, 2013, and shall apply to lawsuit funding contracts executed on or after that date, the public welfare requiring it.