SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1475

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 10, 2024

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 1475.

As amended, this bill regulates consumer legal funding providers. Consumer legal funding is a transaction in which a company purchases and a consumer sells 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 for the consumers household needs. Under current law, consumer legal funding providers are largely unregulated in New Jersey.

The bill delineates a series of requirements for consumer legal funding contracts. This includes:

(1) that it be completely filled in when presented to the consumer for signature;

(2) contain a right of rescission for the consumer;

(3) if applicable, terms and conditions of the contract in the native language of the consumer; and

(4) that it have a written acknowledgment by the attorney retained by the consumer in the legal claim that attests to, among other items: that the attorney is being paid on a contingency basis pursuant to a written fee agreement; that all proceeds of the legal claim will be disbursed via either the trust account or a settlement fund; and that the attorney has not and will not receive a referral fee or other consideration from the consumer legal funding company.

The bill provides that if the written acknowledgment by the attorney is not complete, the contract is void. If the acknowledgement is completed, the contract will remain valid if the consumer terminates the initial attorney or retains a new attorney with respect to the legal claim.

Under the bill, consumer legal funding companies are prohibited from certain actions, including to:

(1) 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, using funds from the consumer legal funding transaction. The consumer legal funding contract is to include a provision informing the consumer of this prohibition; and

(2) charge a fee in an amount greater than 40 percent of the funded amount in any 12-month period. The consumer legal funding contract is to include a provision informing the consumer of the maximum dollar amount charged. In no event is the consumer legal funding company to charge the consumer above the maximum dollar amount specified under the contract.

The bill requires a consumer legal funding company to require the contracted amount to be paid to the company to be set as a predetermined amount based upon intervals of time from the funding date through the resolution date, and not to be determined as a percentage of the recovery from the legal claim.

The bill requires all consumer legal funding contracts to contain certain disclosures. The bill requires the front page of the contract to contain language specifying the funded amount to be paid to the consumer by the consumer legal funding company; an itemization of one time charges; the total amount to be assigned by the consumer to the company, including the funded amount and all charges; and a payment schedule. The contract is to also contain disclosures on: the consumer's right to cancellation; how the company will be notified of a settlement; and the consumer only being required to pay in the event that there are proceeds from the legal claim.

The bill establishes certain enforcement provisions, including a stipulation that nothing in it is to restrict the exercise of powers or the performance of the duties of the Attorney General, which the Attorney General is authorized to exercise or perform by law. The bill provides that the contingent right to receive an amount of the potential proceeds of a legal claim is to be assignable by a consumer. The bill also stipulates that no consumer legal funding company is to report a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the company.

Under the bill, an attorney or law firm retained by the consumer in the legal claim may not have a financial interest in the consumer legal funding company offering consumer legal funding to that consumer. Additionally, no communication between the consumer's attorney in the legal claim and the consumer legal funding company as it pertains to the consumer legal funding are to limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege. The bill also establishes parameters within which materials related to the contract are discoverable and that transactions by a consumer legal funding company are presumed inadmissible as evidence or at trial.

Lastly, the bill provides that unless a consumer legal funding company has first registered with the Department of Banking and Insurance, the company cannot engage in the business of consumer legal funding, and provides for certain criteria for registration, such

as the payment of fees, maintenance of a bond, and investigation of the character and fitness of the applicant.

This bill was prefiled for introduction in the 2024-2025 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

(1) require that the consumer legal funding contract be written in the consumer's native language, if applicable;

(2) remove certain attorney acknowledgement provisions;

(3) require that a consumer legal funding contract include a provision informing the consumer that funding will not be used to pay for court costs, filing fees, or attorney's fees during or after the resolution of the legal claim;

(4) require that a consumer legal funding contract include a provision informing the consumer of the maximum dollar amount charged and prohibit the consumer legal funding company from charging the consumer above the maximum dollar amount specified under the contract;

(5) prohibit consumer legal funding companies from reporting a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the company;

(6) allow the existence of a consumer legal funding contract to be presumed to be discoverable in a civil action and allow an attorney, upon receipt of a written discovery request, 30 calendar days to disclose to the requesting party that a consumer has entered into a consumer legal funding transaction; and

(7) prohibit consumer legal funding transactions from being admitted as evidence or at trial.