

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Consumer Legal Funding Act.

Section 5. Definitions.

"Advertise" means 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.

"Charges" means the fees, as set forth in Section 25, 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 an Illinois consumer pursuant to this Act.

"Consumer" means a natural person who has a pending legal claim and who resides or is domiciled in Illinois.

"Consumer legal funding" or "funding" means a nonrecourse transaction in which a company purchases and a consumer transfers to the company an unvested, contingent future

interest in the potential net proceeds of a settlement or judgment obtained from the consumer's legal claim; if no proceeds are obtained from the consumer's legal claim, the consumer is not required to repay the company the consumer legal funding amount or charges.

"Consumer legal funding company" or "company" means a person or entity that enters into, purchases, or services a consumer legal funding transaction with an Illinois consumer.

"Consumer legal funding company" does not include:

- (1) an immediate family member of the consumer;
- (2) 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
- (3) an attorney or accountant who provides services to a consumer.

"Department" means the Department of Financial and Professional Regulation.

"Funded amount" means the amount of moneys provided to, or on behalf of, the consumer in the consumer legal funding.

"Funded amount" does not include charges except for charges that are deducted from the funded amount.

"Funding date" means the date on which the funded amount

is transferred to the consumer by the consumer legal funding company either by personal delivery; via wire, ACH, or other electronic means; or mailed by insured, certified, or registered United States mail.

"Immediate family member" means a parent; sibling; child by blood, adoption, or marriage; spouse; grandparent; or grandchild.

"Legal claim" means a bona fide civil claim or cause of action.

"Resolution amount" means the funded amount plus the agreed-upon charges that are delivered to the consumer legal funding company on the resolution date.

"Resolution date" means the date the resolution amount is delivered to the consumer legal funding company.

"Secretary" means the Secretary of Financial and Professional Regulation or the Secretary's designee.

Section 10. Contract requirements; right of rescission.

(a) All consumer legal fundings shall meet the following requirements:

(1) the contract shall be completely filled in when presented to the consumer for signature with all blanks marked "not applicable", "n/a", or "none";

(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 14 business days after the funding date, the consumer either:

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

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

(3) the contract shall contain the initials of the consumer on each page.

(b) The contract shall contain a written acknowledgment by the attorney retained by the consumer in the legal claim that attests to the following:

(1) to the best of the attorney's knowledge, all the costs and charges relating to the consumer legal funding have been disclosed to the consumer;

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

(3) all proceeds of the legal claim will be disbursed via either the trust account of the attorney or a settlement fund established to receive the proceeds of the legal claim on behalf of the consumer;

(4) the attorney is following the written instructions of the consumer with regard to the consumer legal funding; and

(5) the attorney has not received a referral fee or other consideration from the consumer legal funding company in connection with the consumer legal funding, nor will the attorney receive such fee or other consideration in the future.

(c) If the acknowledgment required in subsection (b) is not completed by the attorney retained by the consumer in the legal claim, the contract shall be null and void. The contract remains valid and enforceable if the consumer terminates representation by the initial attorney who completed the acknowledgment required in subsection (b) or retains a new attorney with respect to the legal claim.

(d) No licensee shall permit an obligor to owe the licensee, an agent of the licensee, or an affiliate of the licensee, including a corporation owned or managed by the licensee, an aggregate principal amount in excess of \$100,000, unless permitted by rule, at any time for consumer legal fundings transacted pursuant to this Act.

(e) Any transaction that does not exactly meet the definition of a consumer legal funding under Section 5 is subject to the Interest Act and any other applicable law.

Section 15. Consumer legal funding company prohibitions. A

consumer legal funding company shall not:

(1) pay or offer to pay commissions, referral fees, or other forms of consideration to any attorney, law firm, medical provider, chiropractic physician, or physical therapist or any of their employees or agents 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 or agents;

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

(4) refer, in furtherance of an initial consumer 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, if a customer needs legal representation, the company may refer the customer to a local or State bar association referral service or to a legal aid organization;

(5) fail to supply a true copy of the executed contract to the attorney for the consumer upon execution and if the consumer or their attorney requests a copy;

(6) knowingly provide funding to a consumer who has previously assigned or sold a portion of the consumer's right to proceeds from his or her legal claim without first making payment to or purchasing a prior unsatisfied

consumer legal funding company's entire funded amount and contracted charges, unless a lesser amount is otherwise agreed to in writing by the consumer legal funding companies, except that multiple companies may agree to contemporaneously provide funding to a consumer if the consumer and the consumer's attorney consent to the arrangement in writing;

(7) receive any right to, nor make any decisions with respect to, the conduct of the underlying legal claim or any settlement or resolution of the legal claim; the right to make such decisions shall remain solely with the consumer and the consumer's attorney in the legal claim; or

(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 using funds from the consumer legal funding transaction.

Section 20. Satisfaction of the contract. A consumer legal funding company shall require the resolution amount to be set as a predetermined amount, based upon intervals of time from the date of origination of the funding through the date of resolution of the legal claim, and not be determined as a percentage of the recovery from the legal claim.

Section 25. Fees.

(a) The fee charged by a consumer legal funding company to the consumer shall be calculated as not more than 18% of the funded amount, assessed on the outset of every 6 months.

(b) In addition, a consumer legal funding company may charge a document preparation fee not to exceed \$75, which may be deducted from the funded amount. This fee is to be used to defray the ordinary cost of opening, administering, and terminating a consumer legal funding.

(c) A consumer legal funding company shall not collect any additional fees unless otherwise specified in this Act.

(d) No charges may accrue on a consumer legal funding for more than 42 months after the funding date of the consumer legal funding. No consumer legal funding may be refinanced except as authorized by rule. Notwithstanding the foregoing, a consumer legal funding company may assess charges on any additional amounts provided after the funding date for 42 months after the additional funding date.

Section 30. Disclosures. 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 12-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 or on the consumer's behalf by the consumer legal funding company;

(B) an itemization of charges;

(C) the maximum total amount to be paid by the consumer to the company, including the funded amount and all fees; and

(D) a payment schedule to include the resolution amount, listing dates, and the amount due at the end of each 6-month period from the funding date, until the date the maximum amount is due to the company by the consumer to satisfy the amount due pursuant to the contract.

(2) Pursuant to the provisions set forth in paragraph (2) of subsection (a) of Section 10, within the body of the contract: "CONSUMER'S RIGHT TO CANCELLATION: You may cancel this contract without penalty or further obligation within 14 business days after the funding date if you either:

(A) return to the consumer legal funding company the full amount of the funds disbursed to you or on your behalf by delivering the company's uncashed check to the company's office in person; or

(B) place in the mail, by mail service materially equivalent to United States Postal Service certified mail, addressed to the company at the address

specified in the contract, a notice of cancellation and include in such mailing a return of the full amount of funds disbursed to you or on your behalf 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: "The consumer legal funding company shall have no role in deciding whether, when, and how much the legal claim is settled for, however, the consumer and consumer's attorney must notify the company of the outcome of the legal claim by settlement or adjudication before the resolution date. The company may seek updated information about the status of the legal claim but in no event shall the company interfere with the independent professional judgment of the attorney in the handling of the legal claim or any settlement thereof."

(4) Within the body of the contract, in all capital letters in at least 12-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. YOU WILL NOT OWE [INSERT NAME OF THE CONSUMER LEGAL FUNDING COMPANY] ANYTHING IF THERE ARE NO REMAINING PROCEEDS AVAILABLE FROM YOUR LEGAL CLAIM, UNLESS YOU OR YOUR ATTORNEY HAVE COMMITTED FRAUD AGAINST THE CONSUMER LEGAL FUNDING

COMPANY."

(5) Located immediately above the place on the contract where the consumer's signature is required, in 12-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."

(6) The consumer legal funding company shall provide the consumer with information on accessing a financial coaching program no later than the funding date.

Section 35. Violations.

(a) Nothing in this Act shall be construed to restrict the exercise of powers or the performance of the duties of the Illinois Attorney General that he or she is authorized to exercise or perform by law.

(b) Any violation of this Act constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act.

(c) The Illinois Attorney General may enforce a violation of this Act as an unlawful practice under the Consumer Fraud

and Deceptive Business Practices Act.

Section 40. Assignability; liens.

(a) The contingent right to receive an amount of the potential proceeds of a legal claim is assignable by a consumer.

(b) Only liens related to the legal claim, including attorney's liens, Medicare, or other statutory liens, shall take priority over any lien of the consumer legal funding company. All other liens shall take priority by normal operation of law.

(c) A consumer legal funding transaction does not constitute an assignment of a personal injury claim or chose in action.

(d) A consumer legal funding transaction does not constitute the assignment of any present right; the transaction constitutes the transfer of an unvested, contingent future interest in an amount of the potential proceeds of a legal claim or cause of action.

Section 45. Attorney prohibitions. 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 attorney who has referred the consumer to the consumer's retained attorney shall not have a financial

interest in the consumer legal funding company offering consumer legal funding to that consumer. A consumer legal funding that violates this Section is null and void and no person or entity shall have any right to collect, attempt to collect, receive, or retain any funded amount or charges related to the consumer legal funding.

Section 50. Effect of communication on privileges. 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 shall 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.

Section 55. Consumer legal funding license scope.

(a) It shall be unlawful for any person or entity to operate as a consumer legal funding provider in this State except as authorized by this Act and without first having obtained a license in accordance with this Act. No person or entity may engage in any device, subterfuge, or pretense to evade the requirements of this Act. However, any company that has a license in good standing under the Consumer Installment Loan Act on the effective date of this Act shall be entitled to make consumer legal fundings under the terms of this Act upon the effective date of this Act if that company files an

application for a consumer legal funding license within 60 days after the Department issues forms for the filing of that application and until the Department approves or denies the application for a funding license. Any consumer legal funding contract made by any person or entity in violation of this subsection shall be null and void and the person or entity who entered into the consumer legal funding transaction shall have no right to collect, attempt to collect, receive, or retain any principal, interest, or charges related to the consumer legal funding transaction.

(b) The provisions of this Act do not apply to a bank, savings bank, savings association, or credit union organized under the laws of this State, any other state, or under the laws of the United States.

(c) Any consumer legal funding made by a person not licensed under this Act, including a person holding an inactive license, and not exempt under this Act shall be null and void, and no person or entity shall have any right to collect, attempt to collect, receive, or retain any principal, fee, interest, or charges related to the funding.

Section 60. Licensee name. No person, partnership, association, corporation, limited liability company, or other entity engaged in a business regulated by this Act shall operate the business under a name other than the real names of the entity and individuals conducting the business. The

business may in addition operate under an assumed corporate name pursuant to the Business Corporation Act of 1983, an assumed limited liability company name pursuant to the Limited Liability Company Act, or an assumed business name pursuant to the Assumed Business Name Act.

Section 65. License application process; investigation.

(a) The Secretary may issue a license upon completion of all of the following:

(1) the filing of an application for a license with the Secretary or the Nationwide Multistate Licensing System and Registry as required by the Secretary;

(2) the filing with the Secretary of a listing of judgments entered against and bankruptcy petitions by the license applicant for the preceding 10 years;

(3) the filing of an audited balance sheet, including all footnotes prepared by a certified public accountant in accordance with generally accepted accounting principles and generally accepted auditing standards; notwithstanding the requirements of this subsection, an applicant that is a subsidiary may submit audited consolidated financial statements of its parent, intermediary parent, or ultimate parent if the consolidated statements are supported by consolidating statements that include the applicant's financial statement; if the consolidating statements are unaudited, the applicant's chief financial officer shall

attest to the applicant's financial statements disclosed in the consolidating statements; and

(4) an investigation of the averments required by Section 80, which investigation must allow the Secretary to issue positive findings stating that the financial responsibility, experience, character, and general fitness of the license applicant; of the members thereof if the license applicant is a partnership or association; of the officers and directors thereof if the license applicant is a corporation; and of the managers and members that retain any authority or responsibility under the operating agreement if the license applicant is a limited liability company are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purpose of this Act; if the Secretary does not so find, he or she shall not issue the license and shall notify the license applicant of the denial. The Secretary may impose conditions on a license if the Secretary determines that those conditions are necessary or appropriate. These conditions shall be imposed in writing and shall continue in effect for a period prescribed by the Secretary.

(b) All licenses shall be issued to the license applicant. Upon receipt of the license, a consumer legal funding licensee shall be authorized to engage in the business regulated by this Act. The license shall remain in full force and effect

until it expires, it is surrendered by the licensee, or it is revoked or suspended as provided by this Act.

Section 70. License application form.

(a) An application for a consumer legal funding company license must be made in accordance with Section 65 and, if applicable, in accordance with requirements of the Nationwide Multistate Licensing System and Registry. The application shall be in writing, under oath, and on a form obtained from and prescribed by the Secretary, or may be submitted electronically with attestation to the Nationwide Multistate Licensing System and Registry.

(b) The application shall contain the name and complete business and residential address or addresses of the license applicant. If the license applicant is a partnership, association, corporation, or other form of business organization, the application shall contain the names and complete business and residential addresses of each member, director, and principal officer of the business. The application shall also include a description of the activities of the license applicant in such detail and for such periods as the Secretary may require, including all of the following:

(1) an affirmation of financial solvency noting such capitalization requirements as may be required by the Secretary and access to such credit as may be required by the Secretary;

(2) an applicant shall prove in a form satisfactory to the Secretary that the applicant has and will maintain a positive net worth of a minimum of \$30,000;

(3) an applicant shall submit to the Secretary with the application for a license and every licensee shall maintain a bond to be approved by the Secretary in which the applicant shall be the obligor, in the sum of \$50,000 or such additional amount as required by the Secretary based on the amount of consumer legal fundings made, purchased, or serviced by the licensee in the previous year, and in which an insurance company that is duly authorized by this State to transact the business of fidelity and surety insurance shall be a surety. The surety bond shall run to the Secretary and shall be for the benefit of the Department and of any consumer who incurs damages as a result of any violation of this Act or rules adopted pursuant to this Act by a licensee;

(4) an affirmation that the license applicant or its members, directors, or principals, as may be appropriate, are at least 18 years of age;

(5) information as to the character, fitness, financial and business responsibility, background, experience, and criminal record of any:

(i) person, entity, or ultimate equitable owner that owns or controls, directly or indirectly, 10% or more of any class of stock of the license applicant;

(ii) person, entity, or ultimate equitable owner that is not a depository institution, as defined in Section 1007.50 of the Savings Bank Act, that lends, provides, or infuses, directly or indirectly, in any way, funds to or into a license applicant in an amount equal to or more than 10% of the license applicant's net worth;

(iii) person, entity, or ultimate equitable owner that controls, directly or indirectly, the election of 25% or more of the members of the board of directors of a license applicant; or

(iv) person, entity, or ultimate equitable owner that the Secretary finds influences management of the license applicant; the provisions of this subparagraph shall not apply to a public official serving on the board of directors of a State guaranty agency;

(6) upon written request by the licensee and notwithstanding the provisions of paragraphs (1), (2), and (3) of this subsection, the Secretary may permit the licensee to omit all or part of the information required by those paragraphs if instead of the omitted information, the licensee submits an affidavit stating that the information submitted on the licensee's previous renewal application is still true and accurate; the Department may adopt rules prescribing the form and content of the affidavit that are necessary to accomplish the purposes of

this paragraph; and

(7) any other information as required by rule.

Section 75. License application; Nationwide Multistate Licensing System and Registry.

(a) Applicants for a license shall apply in a form prescribed by the Secretary. Each form shall contain content as set forth by rule, regulation, instruction, or procedure of the Department and may be changed or updated as necessary by the Department in order to carry out the purposes of this Act.

(b) In order to fulfill the purposes of this Act, the Secretary is authorized to establish relationships or contracts with the Nationwide Multistate Licensing System and Registry or other entities designated by the Nationwide Multistate Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Act.

(c) In connection with an application for licensing, the applicant may be required, at a minimum, to furnish to the Nationwide Multistate Licensing System and Registry information concerning the applicant's identity, including personal history and experience in a form prescribed by the Nationwide Multistate Licensing System and Registry, including the submission of authorization for the Nationwide Multistate Licensing System and Registry and the Secretary to obtain:

(1) an independent credit report obtained from a

consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(2) information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(d) For the purposes of this Section, and in order to reduce the points of contact that the Secretary may have to maintain for purposes of paragraph (2) of subsection (c), the Secretary may use the Nationwide Multistate Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source as directed by the Secretary.

Section 80. Averments of applicant. Each application for license shall be accompanied by the following averments stating that the applicant:

(1) will file with the Secretary or Nationwide Multistate Licensing System and Registry, as applicable, any report or reports that it is required to file under any of the provisions of this Act when due;

(2) has not committed a crime against the law of this State, any other state, or of the United States involving moral turpitude or fraudulent or dishonest dealing, and that no final judgment has been entered against it in a civil action upon grounds of fraud, misrepresentation, or deceit that has not been previously reported to the Secretary;

(3) has not engaged in any conduct that would be cause for denial of a license;

(4) has not become insolvent;

(5) has not submitted an application for a license under this Act that contains a material misstatement;

(6) has not demonstrated by course of conduct, negligence or incompetence in performing any act for which it is required to hold a license under this Act;

(7) will advise the Secretary in writing or the Nationwide Multistate Licensing System and Registry, as applicable, of any changes to the information submitted on the most recent application for license or averments of record within 30 days after the change; the written notice must be signed in the same form as the application for the license being amended;

(8) will comply with the provisions of this Act and with any lawful order, rule, or regulation made or issued under the provisions of this Act;

(9) will submit to periodic examination by the Secretary as required by this Act; and

(10) will advise the Secretary in writing of judgments entered against and bankruptcy petitions by the license applicant within 5 days after the occurrence.

A licensee who fails to fulfill the obligations of an averment, fails to comply with averments made, or otherwise violates any of the averments made under this Section shall be

subject to the penalties of this Act.

Section 85. Refusal to issue license. The Secretary may refuse to issue or renew a license if:

- (1) it is determined that the applicant is not in compliance with any provisions of this Act;
- (2) there is substantial continuity between the applicant and any violator of this Act; or
- (3) the Secretary cannot make the findings specified in subsection (a) of Section 65.

Section 90. Closing of business; surrender of license. At least 10 days before a licensee ceases operations, closes business, or files for bankruptcy:

- (1) The licensee shall notify the Department of its action in writing.
- (2) With the exception of filing for bankruptcy, the licensee shall surrender its license to the Secretary for cancellation; the surrender of the license shall not affect the licensee's civil or criminal liability for acts committed before surrender or entitle the licensee to a return of any part of the annual license fee.
- (3) The licensee shall notify the Department of the location where the books, accounts, contracts, and records will be maintained and the procedure to ensure prompt return of contracts, titles, and releases to the

customers.

(4) The accounts, books, records, and contracts shall be maintained and serviced by the licensee or another licensee under this Act or an entity exempt from licensure under this Act.

(5) The Department shall have the authority to conduct examinations of the books, records, and funding documents at any time after surrender of the license, filing of bankruptcy, or the cessation of operations.

Section 95. License renewal; fees.

(a) Licenses shall be renewed every year using the common renewal date of the Nationwide Multistate Licensing System and Registry, as required by the Secretary. Properly completed renewal application forms and filing fees may be received by the Secretary 60 days before the license expiration date, but to be deemed timely the completed renewal application forms and filing fees must be received by the Secretary no later than 30 days before the license expiration date.

(b) It shall be the responsibility of each licensee to accomplish renewal of its license. Failure by a licensee to submit a properly completed renewal application form and fees in a timely fashion, absent a written extension from the Secretary, shall result in the license becoming inactive.

(c) No activity regulated by this Act shall be conducted by the licensee when a license becomes inactive. An inactive

license may be reactivated by the Secretary upon payment of a renewal fee and payment of a reactivation fee equal to the renewal fee.

(d) A licensee ceasing an activity or activities regulated by this Act and desiring to no longer be licensed shall inform the Secretary in writing and, at the same time, convey any license issued and all other symbols or indicia of licensure. The licensee shall include a plan for the withdrawal from the regulated business, including a timetable for the disposition of the business, and comply with the surrender guidelines or rules of the Department. Upon receipt of such written notice, the Secretary shall post the cancellation or issue a certified statement canceling the license.

(e) The expenses of administering this Act, including investigations and examinations provided for in this Act, shall be borne by and assessed against entities regulated by this Act. The fees listed in this Section shall be payable to the Department or to the Nationwide Multistate Licensing System and Registry for transfer to the required recipients by the Secretary. The Secretary will specify the form of payment to the Department or to the Nationwide Multistate Licensing System and Registry, which may include certified check, money order, credit card, or other forms of payment authorized by the Secretary. The Nationwide Multistate Licensing System and Registry shall be authorized to collect and process transaction fees or other fees related to licensees or other

persons subject to the Act.

(f) Applicants and licensees shall be subject to the following fees:

(1) For each application for an initial license, the applicant shall pay a nonrefundable initial application fee of \$1,000 and a nonrefundable background investigation fee of \$800.

(2) For each application for an annual renewal of a license, the applicant shall pay a nonrefundable renewal fee of \$1,000. For each application for a renewal of an inactive license, the applicant shall pay the nonrefundable renewal fee of \$1,000 and an additional nonrefundable reactivation fee equal to the renewal fee.

(3) The licensee shall pay a nonrefundable fee of \$1,000 for each notice of change of ownership or control filed.

(4) The licensee shall pay a nonrefundable fee of \$50 for each notice of change of officers or directors or change of name or address filed.

(5) Any licensee or person who delivers a check or other payment to the Department that is returned unpaid by the financial institution upon which it is drawn shall pay to the Department, in addition to the amount already owed, a fee of \$50.

(6) Time expended in the conduct of any examination of the affairs of any licensee or its affiliates shall be

billed by the Department at a rate of \$510 per examiner day. Examination fees shall be billed following completion of the examination and shall be paid within 30 days after receipt of the billing.

(7) If out-of-state travel occurs in the conduct of any examination, the licensee shall make arrangements to reimburse the Department for all charges for services, including travel expenses, including airfare, hotel and per diem expenses incurred by the employee. These expenses are to be in accord with applicable travel regulations published by the Department of Central Management Services and approved by the Governor's Travel Control Board.

(8) Each licensee shall pay to the Department its pro rata share of the cost for administration of the Act that exceeds other fees listed in this Section, as estimated by the Department, for the current year and any deficit actually incurred in the administration of the Act in prior years. The calculation method for each licensee's pro rata share shall be established by rule.

(g) Beginning one year after the effective date of this Act, the Department may, by rule, amend the fees set forth in this Section.

Section 100. Secretary of Financial and Professional Regulation; functions and powers. The functions and powers of the Secretary shall include the following:

(1) to issue or refuse to issue any license as provided by this Act;

(2) to revoke or suspend for cause any license issued under this Act;

(3) to keep records of all licenses issued under this Act;

(4) to receive, consider, investigate, and act upon complaints made by any person in connection with any licensed consumer legal funding company in this State or unlicensed consumer legal funding activity;

(5) to prescribe the forms of and receive:

(A) applications for licenses; and

(B) all reports and all books and records required to be made by any licensee under this Act, including annual audited financial statements and annual reports of consumer legal funding activity;

(6) to subpoena documents and witnesses and compel their attendance and production, to administer oaths, and to require the production of any books, papers, or other materials relevant to any inquiry authorized by this Act;

(7) to issue orders against any person:

(A) if the Secretary has reasonable cause to believe that an unsafe, unsound, or unlawful practice has occurred, is occurring, or is about to occur;

(B) if any person has violated, is violating, or is about to violate any law, rule, or written

agreement with the Secretary; or

(C) for the purpose of administering the provisions of this Act and any rule adopted in accordance with this Act;

(8) to address any inquiries to any licensee, or the officers of the licensee, in relation to the licensee's activities and conditions or any other matter connected with its affairs, and it shall be the duty of any licensee or person so addressed to promptly reply in writing to those inquiries; the Secretary may also require reports from any licensee at any time the Secretary chooses;

(9) to examine the books and records of every licensee under this Act;

(10) to enforce the provisions of this Act;

(11) to levy fees, fines, and charges for services performed in administering this Act; the aggregate of all fees collected by the Secretary on and after the effective date of this Act shall be paid promptly after receipt, accompanied by a detailed statement of fees paid, into the Financial Institutions Fund; the amounts deposited into that Fund shall be used for the ordinary and contingent expenses of the Department; nothing in this Act shall prevent the continuation of the practice of paying expenses involving salaries, retirement, social security, and State-paid insurance of State officers by appropriation from the General Revenue Fund or any other

fund;

(12) to appoint examiners, supervisors, experts, and special assistants as needed to effectively and efficiently administer this Act;

(13) to conduct hearings for the purpose of:

(A) appeals of orders of the Secretary;

(B) suspensions or revocations of licenses;

(C) fining of licensees or unlicensed persons or entities;

(D) investigating:

(i) complaints against licensees or unlicensed persons or entities; or

(ii) annual gross delinquency rates; and

(E) carrying out the purposes of this Act;

(14) to exercise visitorial power over a licensee;

(15) to enter into cooperative agreements with state regulatory authorities of other states to provide for examination of corporate offices or branches of those states and to accept reports of those examinations;

(16) to assign an examiner or examiners to monitor the affairs of a licensee with whatever frequency the Secretary determines appropriate and to charge the licensee for reasonable and necessary expenses of the Secretary if in the opinion of the Secretary an emergency exists or appears likely to occur;

(17) to impose civil penalties of up to \$50 per day

against a licensee for failing to respond to a regulatory request or reporting requirement; and

(18) to enter into agreements in connection with the Nationwide Multistate Licensing System and Registry.

Section 105. Other businesses.

(a) Upon application by the licensee and payment of a \$500 fee, the Secretary may approve the conduct of other businesses not specifically permitted by this Act in the licensee's place of business, unless the Secretary finds that such conduct will conceal or facilitate evasion or violation of this Act. The Secretary's approval shall be in writing and shall describe the other businesses which may be conducted in the licensed office.

(b) The Department shall adopt and enforce such reasonable rules and regulations for the conduct of business under this Act in the same office with other businesses as may be necessary to prevent evasions or violations of this Act. The Secretary may investigate any business conducted in the licensed office.

Section 110. Financial Institution Fund. All moneys received by the Secretary under this Act in conjunction with the provisions relating to consumer legal funding companies shall be paid into the Financial Institution Fund and all expenses incurred by the Secretary under this Act in

conjunction with the provisions relating to consumer legal funding companies shall be paid from the Financial Institution Fund.

Section 115. Examination; prohibited activities.

(a) The business affairs of a licensee under this Act shall be examined for compliance with this Act as often as the Secretary deems necessary and proper. The Department may adopt rules with respect to the frequency and manner of examination. The Secretary shall appoint a suitable person to perform an examination. The Secretary and his or her appointees may examine the entire books, records, documents, and operations of each licensee and its subsidiary, affiliate, or agent, and may examine any of the licensee's or its subsidiary's, affiliate's, or agent's officers, directors, employees, and agents under oath.

(b) The Secretary shall prepare a sufficiently detailed report of each licensee's examination, shall issue a copy of the report to each licensee's principals, officers, or directors, and shall take appropriate steps to ensure correction of violations of this Act.

(c) Affiliates of a licensee shall be subject to examination by the Secretary on the same terms as the licensee, but only when reports from or examination of a licensee provides for documented evidence of unlawful activity between a licensee and affiliate benefiting, affecting, or

deriving from the activities regulated by this Act.

(d) The expenses of any examination of the licensee and affiliates shall be borne by the licensee and assessed by the Secretary as may be established by rule.

(e) Upon completion of the examination, the Secretary shall issue a report to the licensee. All confidential supervisory information, including the examination report and the work papers of the report, shall belong to the Secretary's office and may not be disclosed to anyone other than the licensee, law enforcement officials or other regulatory agencies that have an appropriate regulatory interest as determined by the Secretary, or to a party presenting a lawful subpoena to the Department. The Secretary may, through the Attorney General, immediately appeal to the court of jurisdiction the disclosure of such confidential supervisory information and seek a stay of the subpoena pending the outcome of the appeal. Reports required of licensees by the Secretary under this Act and results of examinations performed by the Secretary under this Act shall be the property of only the Secretary, but may be shared with the licensee. Access under this Act to the books and records of each licensee shall be limited to the Secretary and his or her agents as provided in this Act and to the licensee and its authorized agents and designees. No other person shall have access to the books and records of a licensee under this Act. Any person upon whom a demand for production of confidential supervisory information

is made, whether by subpoena, order, or other judicial or administrative process, must withhold production of the confidential supervisory information and must notify the Secretary of the demand, at which time the Secretary is authorized to intervene for the purpose of enforcing the limitations of this Section or seeking the withdrawal or termination of the attempt to compel production of the confidential supervisory information. The Secretary may impose any conditions and limitations on the disclosure of confidential supervisory information that are necessary to protect the confidentiality of that information. Except as authorized by the Secretary, no person obtaining access to confidential supervisory information may make a copy of the confidential supervisory information. The Secretary may condition a decision to disclose confidential supervisory information on entry of a protective order by the court or administrative tribunal presiding in the particular case or on a written agreement of confidentiality. In a case in which a protective order or agreement has already been entered between parties other than the Secretary, the Secretary may nevertheless condition approval for release of confidential supervisory information upon the inclusion of additional or amended provisions in the protective order. The Secretary may authorize a party who obtained the records for use in one case to provide them to another party in another case, subject to any conditions that the Secretary may impose on either or both

parties. The requester shall promptly notify other parties to a case of the release of confidential supervisory information obtained and, upon entry of a protective order, shall provide copies of confidential supervisory information to the other parties.

Section 120. Judicial review. All final administrative decisions of the Department under this Act, all amendments and modifications of final administrative decisions, and any rules adopted by the Department pursuant to this Act shall be subject to judicial review pursuant to the provisions of the Administrative Review Law.

Section 125. Subpoena power.

(a) The Secretary shall have the power to issue and to serve subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all books, accounts, records, and other documents and materials relevant to an examination or investigation. The Secretary, or his or her duly authorized representative, shall have power to administer oaths and affirmations to any person.

(b) In the event of noncompliance with a subpoena or subpoena duces tecum issued or caused to be issued by the Secretary, the Secretary may, through the Attorney General, petition the circuit court of the county in which the person subpoenaed resides or has its principal place of business for

an order requiring the subpoenaed person to appear and testify and to produce such books, accounts, records, and other documents as are specified in the subpoena duces tecum. The court may grant injunctive relief restraining the person from advertising, promoting, soliciting, entering into, offering to enter into, continuing, or completing any consumer legal funding transaction. The court may grant other relief, including, but not limited to, the restraint, by injunction or appointment of a receiver, of any transfer, pledge, assignment, or other disposition of the person's assets or any concealment, alteration, destruction, or other disposition of books, accounts, records, or other documents and materials as the court deems appropriate, until the person has fully complied with the subpoena or subpoena duces tecum and the Secretary has completed an investigation or examination.

(c) If it appears to the Secretary that the compliance with a subpoena or subpoena duces tecum issued or caused to be issued by the Secretary pursuant to this Section is essential to an investigation or examination, the Secretary may, in addition to the other remedies provided for in this Act, through the Attorney General, apply for relief to the circuit court of the county in which the subpoenaed person resides or has its principal place of business. The court shall thereupon direct the issuance of an order against the subpoenaed person requiring sufficient bond conditioned on compliance with the subpoena or subpoena duces tecum. The court shall cause to be

endorsed on the order a suitable amount of bond or payment pursuant to which the person named in the order shall be freed, having a due regard to the nature of the case.

(d) In addition, the Secretary may, through the Attorney General, seek a writ of attachment or an equivalent order from the circuit court having jurisdiction over the person who has refused to obey a subpoena, who has refused to give testimony, or who has refused to produce the matters described in the subpoena duces tecum.

Section 130. Report required of licensee. In addition to any reports required under this Act, every licensee shall file any other report that the Secretary requires.

Section 135. Suspension; revocation of licenses; fines.

(a) Upon written notice to a licensee, the Secretary may suspend or revoke any license issued pursuant to this Act if, in the notice, he or she makes a finding of one or more of the following:

(1) that through separate acts or an act or a course of conduct, the licensee has violated any provisions of this Act, any rule adopted by the Department, or any other law, rule, or regulation of this State or the United States;

(2) that any fact or condition exists that, if it had existed at the time of the original application for the license, would have warranted the Secretary in refusing

originally to issue the license; or

(3) that if a licensee is other than an individual, any ultimate equitable owner, officer, director, or member of the licensed partnership, association, corporation, or other entity has acted or failed to act in a way that would be cause for suspending or revoking a license to that party as an individual.

(b) No license shall be suspended or revoked, except as provided in this Section, nor shall any licensee be fined without notice of his or her right to a hearing as provided in subsection (n).

(c) The Secretary, on good cause shown that an emergency exists, may suspend any license for a period not exceeding 180 days, pending investigation.

(d) The provisions of subsection (d) of Section 95 shall not affect a licensee's civil or criminal liability for acts committed before surrender of a license.

(e) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any person.

(f) Every license issued under this Act shall remain in force and effect until the license expires without renewal, is surrendered, is revoked, or is suspended in accordance with the provisions of this Act, but the Secretary shall have authority to reinstate a suspended license or to issue a new license to a licensee whose license has been revoked if no fact

or condition then exists which would have warranted the Secretary in refusing originally to issue that license under this Act.

(g) Whenever the Secretary revokes or suspends a license issued pursuant to this Act or fines a licensee under this Act, he or she shall execute a written order to that effect. The Secretary shall serve a copy of the order upon the licensee. Any such order may be reviewed in the manner provided by Section 170.

(h) If the Secretary finds any person in violation of the grounds set forth in subsection (p), he or she may enter an order imposing one or more of the following penalties:

(1) revocation of license;

(2) suspension of a license subject to reinstatement upon satisfying all reasonable conditions the Secretary may specify;

(3) placement of the licensee or applicant on probation for a period of time and subject to all reasonable conditions as the Secretary may specify;

(4) issuance of a reprimand;

(5) imposition of a fine not to exceed \$25,000 for each count of separate offense; except that a fine may be imposed that shall not exceed \$75,000 for each separate count of offense in violation of paragraph (2) of subsection (i);

(6) denial of a license; or

(7) restitution for the benefit of consumers.

(i) The Secretary may, after 10 days' notice by certified mail to the licensee at the address set forth in the license stating the contemplated action and in general the grounds therefor, fine the licensee an amount not exceeding \$10,000 per violation or revoke or suspend any license issued under this Act if he or she finds that:

(1) the licensee has failed to comply with any provision of this Act, any rule adopted pursuant to this Act, or any order, decision, finding, or direction of the Secretary lawfully made pursuant to the authority of this Act; or

(2) any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted the Secretary in refusing to issue the license.

(j) The Secretary may fine, suspend, or revoke only the particular license with respect to which grounds for the fine, revocation, or suspension occur or exist, but if the Secretary finds that grounds for revocation are of general application to all offices or to more than one office of the licensee, the Secretary shall fine, suspend, or revoke every license to which the grounds apply.

(k) No revocation, suspension, or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any obligor.

(l) The Secretary may issue a new license to a licensee whose license has been revoked when facts or conditions which clearly would have warranted the Secretary in refusing originally to issue the license no longer exist.

(m) In every case in which a license is suspended or revoked or an application for a license or renewal of a license is denied, the Secretary shall serve the licensee with notice of his or her action, including a statement of the reasons for his or her actions, either personally or by certified mail. Service by certified mail shall be deemed completed when the notice is deposited in the U.S. mail.

(n) An order assessing a fine, an order revoking or suspending a license, or an order denying renewal of a license shall take effect upon service of the order unless the licensee requests a hearing, in writing, within 10 days after the date of service. If a hearing is requested, the order shall be stayed until a final administrative order is entered.

(1) If the licensee requests a hearing, the Secretary shall schedule a hearing within 30 days after the request for a hearing unless otherwise agreed to by the parties.

(2) The hearing shall be held at the time and place designated by the Secretary. The Secretary and any administrative law judge designated by him or her shall have the power to administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of books, papers,

correspondence, and other records or information that he or she considers relevant or material to the inquiry.

(o) The costs of administrative hearings conducted pursuant to this Section shall be paid by the licensee.

(p) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (h) may be taken:

(1) being convicted or found guilty, regardless of pendency of an appeal, of a crime in any jurisdiction that involves fraud, dishonest dealing, or any other act of moral turpitude;

(2) fraud, misrepresentation, deceit, or negligence in any relation to any consumer legal funding;

(3) a material or intentional misstatement of fact on an initial or renewal application;

(4) insolvency or filing under any provision of the United States Bankruptcy Code as a debtor;

(5) failure to account or deliver to any person any property, such as any money, fund, deposit, check, draft, or other document or thing of value, that has come into his or her hands and that is not his or her property or that he or she is not in law or equity entitled to retain, under the circumstances and at the time which has been agreed upon or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to such accounting and delivery;

(6) failure to disburse funds in accordance with agreements;

(7) having a license, or the equivalent, to practice any profession or occupation revoked, suspended, or otherwise acted against, including the denial of licensure by a licensing authority of this State or another state, territory, or country, for fraud, dishonest dealing, or any other act of moral turpitude;

(8) failure to comply with an order of the Secretary or rule adopted under the provisions of this Act;

(9) engaging in activities regulated by this Act without a current, active license unless specifically exempted by this Act;

(10) failure to pay in a timely manner any fee, charge, or fine under this Act;

(11) failure to maintain, preserve, and keep available for examination all books, accounts, or other documents required by the provisions of this Act and the rules of the Department;

(12) refusing, obstructing, evading, or unreasonably delaying an investigation, information request, or examination authorized under this Act, or refusing, obstructing, evading, or unreasonably delaying compliance with the Secretary's subpoena or subpoena duces tecum;

(13) failure to comply with or a violation of any provision of this Act; and

(14) any unfair, deceptive, or abusive business practice.

(q) A licensee shall be subject to the disciplinary actions specified in this Act for violations of subsection (i) by any officer, director, shareholder, joint venture, partner, ultimate equitable owner, or employee of the licensee.

(r) A licensee shall be subject to suspension or revocation for unauthorized employee actions only if there is a pattern of repeated violations by employees, the licensee has knowledge of the violations, or there is substantial harm to a consumer. A licensee may be subject to fine for employee actions, whether authorized or unauthorized, whether there is a pattern of repeated violations or no pattern of repeated violations.

(s) Any licensee may submit an application to surrender a license, but, upon the Secretary approving the surrender, it shall not affect the licensee's civil or criminal liability for acts committed before surrender or entitle the licensee to a return of any part of the license fee.

Section 140. Investigation of complaints. The Secretary may receive, record, and investigate complaints and inquiries made by any person concerning this Act and any licensees under this Act. Each licensee shall open its books, records, documents, and offices wherever situated to the Secretary or his or her appointees as needed to facilitate such

investigations.

Section 145. Additional investigation and examination authority. In addition to any authority allowed under this Act, the Secretary shall have the authority to conduct investigations and examinations as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this Act, the Secretary shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to, the following:

(A) criminal, civil, and administrative history information, including nonconviction data as specified in the Criminal Code of 2012;

(B) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the federal Fair Credit Reporting Act; and

(C) any other documents, information, or evidence the Secretary deems relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of the documents, information, or evidence.

(2) For the purposes of investigating violations or complaints arising under this Act or for the purposes of examination, the Secretary may review, investigate, or examine any licensee, individual, or person subject to this Act as often as necessary in order to carry out the purposes of this Act. The Secretary may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the consumer legal fundings or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the Secretary deems relevant to the inquiry.

(3) Each licensee, individual, or person subject to this Act shall make available to the Secretary upon request the books and records relating to the operations of the licensee, individual, or person subject to this Act. The Secretary shall have access to those books and records and may interview the officers, principals, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to this Act concerning their business.

(4) Each licensee, individual, or person subject to this Act shall make or compile reports or prepare other information as directed by the Secretary in order to carry out the purposes of this Section, including, but not

limited to:

(A) accounting compilations;

(B) information lists and data concerning consumer legal fundings in a format prescribed by the Secretary; or

(C) other information deemed necessary to carry out the purposes of this Section.

(5) In making any examination or investigation authorized by this Act, the Secretary may control access to any documents and records of the licensee or person under examination or investigation. The Secretary may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no person shall remove or attempt to remove any of the documents or records, except pursuant to a court order or with the consent of the Secretary. Unless the Secretary has reasonable grounds to believe the documents or records of the licensee have been or are at risk of being altered or destroyed for purposes of concealing a violation of this Act, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(6) In order to carry out the purposes of this Section, the Secretary may:

(A) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(B) enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this Section;

(C) use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this Act;

(D) accept and rely on examination or investigation reports made by other government officials within or outside this State; or

(E) accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this Act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the Secretary.

(7) The authority of this Section shall remain in

effect if a licensee, individual, or person subject to this Act acts or claims to act under any licensing or registration law of this State or claims to act without the authority.

(8) No licensee, individual, or person subject to investigation or examination under this Section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

Section 150. Confidential information. In hearings conducted under this Act, information presented into evidence that was acquired by the licensee when serving any individual in connection with a consumer legal funding, including all financial information of the individual, shall be deemed strictly confidential and shall be made available only as part of the record of a hearing under this Act or otherwise (i) when the record is required, in its entirety, for purposes of judicial review or (ii) upon the express written consent of the individual served, or in the case of his or her death or disability, the consent of his or her personal representative.

Section 155. Information sharing. In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing:

(1) Except as otherwise provided in any federal law or

State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, any privilege arising under federal or State law, including the rules of any federal or State court, with respect to such information or material shall continue to apply to information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. The information and material may be shared with all State and federal regulatory officials with relevant oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or State law.

(2) The Secretary is authorized to enter into agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies as established by rule or order of the Department. The sharing of confidential supervisory information or any information or material described in paragraph (1) pursuant to an agreement or sharing arrangement shall not result in the loss of privilege or the loss of confidentiality protections provided by federal law or State law.

(3) Information or material that is subject to a privilege or confidentiality under paragraph (1) shall not

be subject to the following:

(A) disclosure under any State law governing the disclosure to the public of information held by an officer or an agency of the State; or

(B) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to the information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of that person, that privilege.

(4) Any other law relating to the disclosure of confidential supervisory information or any information or material described in paragraph (1) that is inconsistent with paragraph (1) shall be superseded by the requirements of this Section to the extent the other law provides less confidentiality or a weaker privilege.

Section 160. Reports of violations. Any person licensed under this Act or any other person may report to the Secretary any information to show that a person subject to this Act is or may be in violation of this Act. A person who files a report with the Department that a licensee is engaged in one or more violations pursuant to this Act shall not be the subject of disciplinary action by the Department, unless the Department

determines, by a preponderance of the evidence available to the Department, that the reporting person knowingly and willingly participated in the violation that was reported.

Section 165. Rules of the Department.

(a) In addition to such powers as may be prescribed by this Act, the Department is hereby authorized and empowered to adopt rules consistent with the purposes of this Act, including, but not limited to:

(1) rules in connection with the activities of licensees or unlicensed consumer legal funding companies as may be necessary and appropriate for the protection of consumers in this State;

(2) rules as may be necessary and appropriate to define improper or fraudulent business practices in connection with the activities of licensees in servicing consumer legal fundings;

(3) rules that define the terms used in this Act and as may be necessary and appropriate to interpret and implement the provisions of this Act; and

(4) rules as may be necessary for the enforcement and administration of this Act.

(b) The Secretary is hereby authorized and empowered to make specific rulings, demands, and findings that he or she deems necessary for the proper conduct of the consumer legal funding company industry.

Section 170. Appeal and review.

(a) The Department may, in accordance with the Illinois Administrative Procedure Act, adopt rules to provide for review within the Department of the Secretary's decisions affecting the rights of persons or entities under this Act. The review shall provide for, at a minimum:

(1) appointment of a hearing officer other than a regular employee of the Department;

(2) appropriate procedural rules, specific deadlines for filings, and standards of evidence and of proof; and

(3) provision for apportioning costs among parties to the appeal.

(b) All final agency determinations of appeals to decisions of the Secretary may be reviewed in accordance with and under the provisions of the Administrative Review Law. Appeals from all final orders and judgments entered by a court in review of any final administrative decision of the Secretary or of any final agency review of a decision of the Secretary may be taken as in other civil cases.

Section 175. Collection of compensation. Unless exempt from licensure under this Act, no person engaged in or offering to engage in any act or service for which a license under this Act is required may bring or maintain any action in any court of this State to collect compensation for the

performance of the licensable services without alleging and proving that he or she was the holder of a valid consumer legal funding company license under this Act at all times during the performance of those services.

Section 180. Cease and desist order.

(a) The Secretary may issue a cease and desist order to any licensee or other person doing business without the required license, when in the opinion of the Secretary the licensee or other person is violating or is about to violate any provision of this Act or any rule or requirement imposed in writing by the Department as a condition of granting any authorization permitted by this Act. The cease and desist order permitted by this Section may be issued before a hearing.

(b) The Secretary shall serve notice of his or her action, including, but not limited to, a statement of the reasons for the action, either personally or by certified mail. Service by certified mail shall be deemed completed when the notice is deposited in the U.S. Mail.

(c) Within 10 days after service of the cease and desist order, the licensee or other person may request a hearing in writing. The Secretary shall schedule a hearing within 90 days after the request for a hearing unless otherwise agreed to by the parties.

(d) If it is determined that the Secretary had the authority to issue the cease and desist order, he or she may

issue such orders as may be reasonably necessary to correct, eliminate, or remedy the conduct.

(e) The powers vested in the Secretary by this Section are in addition to any and all other powers and remedies vested in the Secretary by law, and nothing in this Section shall be construed as requiring that the Secretary shall employ the power conferred in this subsection instead of or as a condition precedent to the exercise of any other power or remedy vested in the Secretary.

Section 185. Injunction. The Secretary may, through the Attorney General, maintain an action in the name of the people of the State of Illinois and may apply for an injunction in the circuit court to enjoin a person from violating this Act or engaging in unlicensed consumer legal funding activity.

Section 190. Pledge or sale of consumer legal funding.

(a) No licensee or other person shall pledge, hypothecate, or sell a consumer legal funding entered into under the provisions of this Act by a consumer except to another licensee under this Act, a bank, savings bank, savings and loan association, or credit union created under the laws of this State or the United States, or to other persons or entities authorized by the Secretary in writing. Sales of such notes by licensees under this Act or other persons shall be made by agreement in writing and shall authorize the Secretary

to examine the consumer legal funding documents so hypothecated, pledged, or sold.

(b) A consumer may pay the original consumer legal funding company until he or she receives notification of assignment of rights to payment pursuant to a consumer legal funding and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee shall seasonably furnish reasonable proof that the assignment has been made and, unless the assignee does so, the consumer may pay the original consumer legal funding company.

(c) An assignee of the rights of the consumer legal funding company is subject to all claims and defenses of the consumer against the consumer legal funding company arising from the consumer legal funding. A claim or defense of a consumer may be asserted against the assignee under this Section only if the consumer has made a good faith attempt to obtain satisfaction from the consumer legal funding company with respect to the claim or defense and then only to the extent of the amount owing to the assignee with respect to the consumer legal funding company claim or defense that arose at the time the assignee has notice of the claim or defense. Notice of the claim or defense may be given before the attempt specified in this subsection. Oral notice is effective unless the assignee requests written confirmation when or promptly after oral notice is given and the consumer fails to give the

assignee written confirmation within the period of time, not less than 14 days, stated to the consumer when written confirmation is requested. An agreement may not limit or waive the claims or defenses of a consumer under this Section.

Section 195. Penalties. Any person who engages in business as a licensee without the license required by this Act commits a Class 4 felony.

Section 200. Civil action. A claim of violation of this Act may be asserted in a civil action. Additionally, a prevailing consumer may be awarded reasonable attorney's fees and court costs.

Section 205. Evasion. An agreement, contract, or transaction that is structured to evade the definition of consumer legal funding shall be deemed a consumer legal funding for the purposes of this Act.

Section 210. Severability. If any clause, sentence, provision, or part of this Act or its application to any person or circumstance is adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, that judgment shall not impair, affect, or invalidate other provisions or applications of this Act, which shall remain in full force and effect thereafter.

Section 905. The Interest Act is amended by changing Section 4 as follows:

(815 ILCS 205/4) (from Ch. 17, par. 6404)

Sec. 4. General interest rate.

(1) Except as otherwise provided in Section 4.05, in all written contracts it shall be lawful for the parties to stipulate or agree that an annual percentage rate of 9%, or any less sum, shall be taken and paid upon every \$100 of money loaned or in any manner due and owing from any person to any other person or corporation in this state, and after that rate for a greater or less sum, or for a longer or shorter time, except as herein provided.

The maximum rate of interest that may lawfully be contracted for is determined by the law applicable thereto at the time the contract is made. Any provision in any contract, whether made before or after July 1, 1969, which provides for or purports to authorize, contingent upon a change in the Illinois law after the contract is made, any rate of interest greater than the maximum lawful rate at the time the contract is made, is void.

It is lawful for a state bank or a branch of an out-of-state bank, as those terms are defined in Section 2 of the Illinois Banking Act, to receive or to contract to receive and collect interest and charges at any rate or rates agreed

upon by the bank or branch and the borrower. It is lawful for a savings bank chartered under the Savings Bank Act or a savings association chartered under the Illinois Savings and Loan Act of 1985 to receive or contract to receive and collect interest and charges at any rate agreed upon by the savings bank or savings association and the borrower.

It is lawful to receive or to contract to receive and collect interest and charges as authorized by this Act and as authorized by the Consumer Installment Loan Act, the Payday Loan Reform Act, the Retail Installment Sales Act, the Illinois Financial Services Development Act, ~~or~~ the Motor Vehicle Retail Installment Sales Act, or the Consumer Legal Funding Act. It is lawful to charge, contract for, and receive any rate or amount of interest or compensation, except as otherwise provided in the Predatory Loan Prevention Act, with respect to the following transactions:

(a) Any loan made to a corporation;

(b) Advances of money, repayable on demand, to an amount not less than \$5,000, which are made upon warehouse receipts, bills of lading, certificates of stock, certificates of deposit, bills of exchange, bonds or other negotiable instruments pledged as collateral security for such repayment, if evidenced by a writing;

(c) Any credit transaction between a merchandise wholesaler and retailer; any business loan to a business association or copartnership or to a person owning and

operating a business as sole proprietor or to any persons owning and operating a business as joint venturers, joint tenants or tenants in common, or to any limited partnership, or to any trustee owning and operating a business or whose beneficiaries own and operate a business, except that any loan which is secured (1) by an assignment of an individual obligor's salary, wages, commissions or other compensation for services, or (2) by his household furniture or other goods used for his personal, family or household purposes shall be deemed not to be a loan within the meaning of this subsection; and provided further that a loan which otherwise qualifies as a business loan within the meaning of this subsection shall not be deemed as not so qualifying because of the inclusion, with other security consisting of business assets of any such obligor, of real estate occupied by an individual obligor solely as his residence. The term "business" shall be deemed to mean a commercial, agricultural or industrial enterprise which is carried on for the purpose of investment or profit, but shall not be deemed to mean the ownership or maintenance of real estate occupied by an individual obligor solely as his residence;

(d) Any loan made in accordance with the provisions of Subchapter I of Chapter 13 of Title 12 of the United States Code, which is designated as "Housing Renovation and Modernization";

(e) Any mortgage loan insured or upon which a commitment to insure has been issued under the provisions of the National Housing Act, Chapter 13 of Title 12 of the United States Code;

(f) Any mortgage loan guaranteed or upon which a commitment to guaranty has been issued under the provisions of the Veterans' Benefits Act, Subchapter II of Chapter 37 of Title 38 of the United States Code;

(g) Interest charged by a broker or dealer registered under the Securities Exchange Act of 1934, as amended, or registered under the Illinois Securities Law of 1953, approved July 13, 1953, as now or hereafter amended, on a debit balance in an account for a customer if such debit balance is payable at will without penalty and is secured by securities as defined in Uniform Commercial Code-Investment Securities;

(h) Any loan made by a participating bank as part of any loan guarantee program which provides for loans and for the refinancing of such loans to medical students, interns and residents and which are guaranteed by the American Medical Association Education and Research Foundation;

(i) Any loan made, guaranteed, or insured in accordance with the provisions of the Housing Act of 1949, Subchapter III of Chapter 8A of Title 42 of the United States Code and the Consolidated Farm and Rural

Development Act, Subchapters I, II, and III of Chapter 50 of Title 7 of the United States Code;

(j) Any loan by an employee pension benefit plan, as defined in Section 3 (2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.A. Sec. 1002), to an individual participating in such plan, provided that such loan satisfies the prohibited transaction exemption requirements of Section 408 (b) (1) (29 U.S.C.A. Sec. 1108 (b) (1)) or Section 2003 (a) (26 U.S.C.A. Sec. 4975 (d) (1)) of the Employee Retirement Income Security Act of 1974;

(k) Written contracts, agreements or bonds for deed providing for installment purchase of real estate, including a manufactured home as defined in subdivision (53) of Section 9-102 of the Uniform Commercial Code that is real property as defined in the Conveyance and Encumbrance of Manufactured Homes as Real Property and Severance Act;

(l) Loans secured by a mortgage on real estate, including a manufactured home as defined in subdivision (53) of Section 9-102 of the Uniform Commercial Code that is real property as defined in the Conveyance and Encumbrance of Manufactured Homes as Real Property and Severance Act;

(m) Loans made by a sole proprietorship, partnership, or corporation to an employee or to a person who has been

offered employment by such sole proprietorship, partnership, or corporation made for the sole purpose of transferring an employee or person who has been offered employment to another office maintained and operated by the same sole proprietorship, partnership, or corporation;

(n) Loans to or for the benefit of students made by an institution of higher education.

(2) Except for loans described in subparagraph (a), (c), (d), (e), (f) or (i) of subsection (1) of this Section, and except to the extent permitted by the applicable statute for loans made pursuant to Section 4a or pursuant to the Consumer Installment Loan Act:

(a) Whenever the rate of interest exceeds an annual percentage rate of 8% on any written contract, agreement or bond for deed providing for the installment purchase of residential real estate, or on any loan secured by a mortgage on residential real estate, it shall be unlawful to provide for a prepayment penalty or other charge for prepayment.

(b) No agreement, note or other instrument evidencing a loan secured by a mortgage on residential real estate, or written contract, agreement or bond for deed providing for the installment purchase of residential real estate, may provide for any change in the contract rate of interest during the term thereof. However, if the Congress of the United States or any federal agency authorizes any

class of lender to enter, within limitations, into mortgage contracts or written contracts, agreements or bonds for deed in which the rate of interest may be changed during the term of the contract, any person, firm, corporation or other entity not otherwise prohibited from entering into mortgage contracts or written contracts, agreements or bonds for deed in Illinois may enter into mortgage contracts or written contracts, agreements or bonds for deed in which the rate of interest may be changed during the term of the contract, within the same limitations.

(3) In any contract or loan which is secured by a mortgage, deed of trust, or conveyance in the nature of a mortgage, on residential real estate, the interest which is computed, calculated, charged, or collected pursuant to such contract or loan, or pursuant to any regulation or rule promulgated pursuant to this Act, may not be computed, calculated, charged or collected for any period of time occurring after the date on which the total indebtedness, with the exception of late payment penalties, is paid in full.

(4) For purposes of this Section, a prepayment shall mean the payment of the total indebtedness, with the exception of late payment penalties if incurred or charged, on any date before the date specified in the contract or loan agreement on which the total indebtedness shall be paid in full, or before the date on which all payments, if timely made, shall have been

made. In the event of a prepayment of the indebtedness which is made on a date after the date on which interest on the indebtedness was last computed, calculated, charged, or collected but before the next date on which interest on the indebtedness was to be calculated, computed, charged, or collected, the lender may calculate, charge and collect interest on the indebtedness for the period which elapsed between the date on which the prepayment is made and the date on which interest on the indebtedness was last computed, calculated, charged or collected at a rate equal to $1/360$ of the annual rate for each day which so elapsed, which rate shall be applied to the indebtedness outstanding as of the date of prepayment. The lender shall refund to the borrower any interest charged or collected which exceeds that which the lender may charge or collect pursuant to the preceding sentence. The provisions of this amendatory Act of 1985 shall apply only to contracts or loans entered into on or after the effective date of this amendatory Act, but shall not apply to contracts or loans entered into on or after that date that are subject to Section 4a of this Act, the Consumer Installment Loan Act, the Payday Loan Reform Act, the Predatory Loan Prevention Act, or the Retail Installment Sales Act, or that provide for the refund of precomputed interest on prepayment in the manner provided by such Act.

(5) For purposes of items (a) and (c) of subsection (1) of this Section, a rate or amount of interest may be lawfully

computed when applying the ratio of the annual interest rate over a year based on 360 days. The provisions of this amendatory Act of the 96th General Assembly are declarative of existing law.

(6) For purposes of this Section, "real estate" and "real property" include a manufactured home, as defined in subdivision (53) of Section 9-102 of the Uniform Commercial Code that is real property as defined in the Conveyance and Encumbrance of Manufactured Homes as Real Property and Severance Act.

(Source: P.A. 101-658, eff. 3-23-21.)

Section 910. The Consumer Fraud and Deceptive Business Practices Act is amended by adding Section 2AAAA as follows:

(815 ILCS 505/2AAAA new)

Sec. 2AAAA. Violations of the Consumer Legal Funding Act.
Any person who violates the Consumer Legal Funding Act commits an unlawful practice within the meaning of this Act.

Section 999. Effective date. This Act takes effect upon becoming law.