

A bill for an act
relating to commerce; regulating nonrecourse presettlement funding transactions;
proposing coding for new law as Minnesota Statutes, chapter 80G.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[80G.01] CITATION.**

This chapter shall be known and may be cited as the "Minnesota Nonrecourse
Presettlement Funding Act."

EFFECTIVE DATE. This section is effective January 1, 2011, and applies to
nonrecourse presettlement funding transactions entered into on or after that date.

Sec. 2. **[80G.02] DEFINITIONS.**

(a) For purposes of this chapter, the terms defined in this subdivision have the
meanings given.

(b) "Presettlement funding company" means an entity that enters into a nonrecourse
presettlement funding transaction with a consumer.

(c) "Commissioner" means the commissioner of commerce.

(d) "Consumer" means an individual or entity residing or domiciled in Minnesota or
who elects to enter into a transaction under this chapter, whether in person or over the
Internet, by facsimile, or any other electronic means, and who has a pending civil claim or
action and is represented by an attorney in connection with that pending civil claim or
action at the time of receiving the nonrecourse presettlement funding.

(e) "Contract" means a written agreement between a consumer and a presettlement funding company in which the presettlement funding company agrees to provide nonrecourse presettlement funding to the consumer in compliance with this section.

(f) "Nonrecourse presettlement funding" means a transaction in which:

(1) a presettlement funding company purchases the right to receive an amount of the potential proceeds from a consumer who has a pending civil claim or action; and

(2) the return on investment to the presettlement funding company is made only out of the proceeds, if any, of the realized settlement, judgment, award, or verdict the consumer may receive in the civil claim or action. For this purpose, the proceeds received by the consumer do not include attorney fees and reimbursements incurred by the consumer's attorney in connection with the civil claim or action, in accordance with the contingent fee agreement between the consumer and the consumer's attorney.

EFFECTIVE DATE. This section is effective January 1, 2011, and applies to nonrecourse presettlement funding transactions entered into on or after that date.

Sec. 3. **[80G.03] REGISTRATION.**

Subdivision 1. Registration required. No person or entity may engage in the business of providing nonrecourse presettlement funding in this state unless the person or entity is registered with the commissioner on a form prescribed by the commissioner.

Subd. 2. Contents. (a) A person or entity shall register with the commissioner under this section by filing with the commissioner an initial registration, which must be updated annually thereafter and within 30 days of any change. The registration must include the following information:

(1) the registrant's name, any assumed names under which the registrant does business or intends to do business in this state, the principal office address, telephone number, and e-mail address;

(2) the name and address of the registrant's agent for service of process in this state, if other than the registrant;

(3) the names of the registrant's executive officer or officers who are directly responsible for the registrant's nonrecourse presettlement funding business;

(4) the name, address, and telephone number of any administrator designated by the registrant as responsible for administration of the registrant's business in this state; and

(5) a copy of each contract and other form that the registrant proposes to use in this state.

(b) The commissioner must make the information in paragraph (a), clauses (1) and (2), available to the public.

(c) If a renewal registration is more than 30 days late, the commissioner may suspend the registration.

Subd. 3. **Registration fee.** The commissioner may charge the registrant a fee to offset the cost of registration and maintenance of records in the amount of \$1,000 for the initial year of registration and \$500 per year thereafter. Fees received under this section must be deposited in an account in the special revenue fund and are appropriated to the commissioner of commerce for purposes of this chapter.

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Sec. 4. **[80G.04] RECORD KEEPING.**

(a) The registrant shall keep accurate accounts, books, and records concerning transactions regulated under this chapter. The records must include copies of all contracts; the name of each customer; and the dates, amounts, and descriptions of all funds provided to or received from customers, including funds provided or received through an attorney or other third party.

(b) The registrant shall retain all required records pertaining to each contract for at least two years after the contract has been fulfilled, terminated, or is otherwise no longer in effect. A registrant that discontinues doing business as a presettlement funding company in this state shall maintain its records as required under this section until it furnishes to the commissioner satisfactory proof that it has discharged all of its obligations to customers in this state.

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Sec. 5. **[80G.05] CONTRACT PROVISIONS.**

(a) All contracts for nonrecourse presettlement funding must comply with the requirements provided in this section.

(b) The contract must be completely filled in and contain on the front page, appropriately headed and in at least 12-point bold type, the following disclosures:

- (1) the total dollar amount to be funded to the consumer;
- (2) an itemization of all fees related to the contract;
- (3) the total dollar amount to be repaid by the consumer, in six-month intervals for 36 months, and including all fees; and

4.1 (4) the annual percentage rate return, calculated as of the last day of each six-month
4.2 interval, including frequency of compounding.

4.3 (c) The contract must provide that the consumer may cancel the contract within
4.4 five business days following the consumer's receipt of funds, without penalty or further
4.5 obligation. The contract must contain the following notice written in a clear and
4.6 conspicuous manner: "Consumer's right to cancellation: You may cancel this contract
4.7 without penalty or further obligation within five business days from the date you receive
4.8 funding from [insert name of presettlement funding company]." The contract must also
4.9 specify that in order for the cancellation to be effective, the consumer must either:

4.10 (1) return to the presettlement funding company the full amount of disbursed funds
4.11 by delivering the presettlement funding company's uncashed check to the presettlement
4.12 company's offices in person within five business days of the disbursement of funds; or

4.13 (2) mail a notice of cancellation and include in that mailing a return of the full
4.14 amount of disbursement funds in the form of the presettlement funding company's
4.15 uncashed check, or a registered or certified check or money order, by insured, registered,
4.16 or certified United States mail, postmarked within five business days after receiving
4.17 funds from the presettlement funding company, to the address specified in the contract
4.18 for the cancellation.

4.19 (d) The contract must contain the following statement in at least 12-point boldface
4.20 type: "The presettlement funding company agrees that it shall have no right to and will not
4.21 make any decisions with respect to the conduct of the underlying civil action or claim or
4.22 any settlement or resolution of it and that the right to make those decisions remains solely
4.23 with you and your attorney in the civil action or claim."

4.24 (e) The contract must be initialed by the consumer on each page.

4.25 (f) The contract must contain the following statement in at least 12-point boldface
4.26 type located immediately above the place on the contract where the consumer's signature is
4.27 required: "Do not sign this contract before you read it completely or if it contains any blank
4.28 spaces. You are entitled to a completely filled-in copy of this contract. Before you sign this
4.29 contract, you should obtain the advice of an attorney. Depending on the circumstances,
4.30 you may want to consult a tax, public or private benefit planning, or financial professional.
4.31 You acknowledge that your attorney in the civil action or claim has provided no tax, public
4.32 or private benefit planning, or financial advice regarding this transaction. You understand
4.33 and agree that the funds received from this nonrecourse presettlement funding must not be
4.34 used to pay for litigation costs related to your underlying legal claim."

4.35 (g) The contract must contain a written acknowledgment by the attorney representing
4.36 the consumer in the civil action or claim that states the following:

(1) the attorney representing the consumer in the civil action has reviewed the contract and determined that all costs and fees have been disclosed, including the annualized rate of return applied to calculate the amount to be paid by the consumer;

(2) the attorney representing the consumer in the civil action or claim is being paid on a contingency basis under a written fee agreement;

(3) all proceeds of the presettlement will be disbursed via the trust account of the attorney representing the consumer in the civil action or claim or via a settlement fund established to receive the proceeds of the presettlement from the defendant on behalf of the consumer; and

(4) the attorney representing the consumer in the civil action or claim is following the written instructions of the consumer with regard to the nonrecourse presettlement funding.

(h) All contracts with the consumer must have plain language, in a box with 15-point font, stating the following in capitalized letters: "IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY THE PRESETTLEMENT FUNDING COMPANY BACK IN FULL, YOU WILL NOT OWE THE PRESETTLEMENT COMPANY ANYTHING IN EXCESS OF YOUR RECOVERY UNLESS YOU HAVE VIOLATED THIS AGREEMENT."

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Sec. 6. **[80G.06] CONSUMER PROTECTIONS.**

(a) The contract must be written in both English and the same language in which the oral negotiations are conducted between the presettlement funding company and the consumer.

(b) If a dispute arises between the consumer and the presettlement funding company concerning the contract for nonrecourse presettlement funding, the responsibilities of the attorney representing the consumer in the civil action or claim shall be no greater than the attorney's responsibilities under the Minnesota rules of professional conduct.

(c) The presettlement funding company shall not offer to pay or pay commissions, referral fees, or rebates to any attorney or employee of a law firm or to any medical provider, chiropractor, or physical therapist or their employees for referring a consumer to the presettlement funding company. The presettlement funding company shall not accept any commissions, referral fees, or rebates from any attorney or employee of a law firm or any medical provider, chiropractor, or physical therapist or their employees.

(d) The presettlement funding company shall not knowingly provide funding to a consumer who has previously sold and assigned an amount of the consumer's

potential proceeds from the consumer's legal claim to another presettlement funding company without first buying out that presettlement funding company's entire accrued balance, unless otherwise agreed in writing by the presettlement funding company and the consumer.

(e) The presettlement funding company shall not advertise false or intentionally misleading information regarding its product or services.

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Sec. 7. **[80G.07] COMMISSIONER'S ENFORCEMENT POWERS.**

The commissioner may take action that is necessary or appropriate to enforce the provisions of this chapter and the commissioner's rules and orders and to protect consumers in this state. The commissioner has the enforcement authority in chapter 45 available to enforce the provisions of this chapter and any rules adopted under it.

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