



**STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
FINANCIAL INSTITUTIONS DIVISION**

Guidance Reference: FID SB432-09302019

Issued: September 30, 2019 Summary: In 2019, Senate Bill No. 432 (S.B. 432) was adopted, creating a new Chapter in Nevada Revised Statutes (NRS) granting the authority to the Financial Institutions Division (Division) to license and regulate consumer litigation funding in Nevada. The Division received several requests for clarification on specific sections of S.B. 432. To assist consumer litigation funding companies with understanding the requirements of S.B. 432, prior to the adoption and implementation of regulations, FID is issuing the below guidance on items on those specific inquiries.

*Statutes and laws.* At the state level, “statutes” and “laws” are interchangeable terms that refer to legislation after it has been passed by both houses of the Nevada legislature and signed into law by the Governor.

*Regulations and rules.* Nevada regulations refer to rules and administrative codes issued by State of Nevada agencies. Although regulations are not laws, they have the force and effect of law since they are adopted under the authority granted by the Nevada Legislature.

*Administrative Guidance.* Unlike a statute or regulation, administrative guidance does not have the force and effect of law, and the agencies do not take enforcement actions based on administrative guidance. Rather, the guidance outlines the agencies expectations and articulates the agencies general views regarding appropriate practices for a given subject area.

- Any and all pre-settlement/consumer litigation funding transactions, contracts, loans and the like issued with licensed companies under NRS Chapter 675 *prior to October 1, 2019*, shall be regulated under NRS Chapter 675 unless and until amended, renewed, consolidated, extended, or refinanced by the consumer’s choice, at which time, S.B. 432 shall apply to the transactions. Otherwise, the provisions of Chapter 675 shall continue to apply to those outstanding transactions, contracts, loans, and the like.
- All new, renewed, consolidated, extended, refinanced, etc., transactions (by the consumer’s choice) issued *after October 1, 2019*, shall be subject to the provisions of S.B. 432. Any companies currently licensed under Chapter 675 which desire to issue new consumer litigation funding transactions must surrender its license under NRS Chapter 675 and submit an application for licensure under S.B. 432.
- New applicants, not currently licensed under NRS 675, seeking licensure under S.B. 432 may submit applications on or after October 1, 2019. Such applicants may not conduct consumer

litigation funding transactions unless and until the submitted application has been reviewed, approved, and a license issued by the Financial Institutions Division.

- A license is required for any person who solicits or engages in consumer litigation funding or provides funds to a consumer based upon a legal claim, regardless if the transaction is a nonrecourse or recourse transaction.
- For the purpose of section 8.1(b) and (d), the bill does not apply to an attorney who is in compliance with Model Rule 1.8, an accountant, or medical factoring company that provides services to a client in the usual course of the practice of their profession. If an attorney, accountant or medical factoring company engages in the business of consumer litigation funding, regardless of how often provided and/or the funded amount provided to a consumer or client shall be considered a consumer litigation funding company as defined in S.B. 432, and shall require licensing accordingly.
- All required notices from the consumer litigation company to the consumer's attorney must occur immediately, but at a minimum, must occur within one business day. Including, but is not limited to, notice of cancellation of contract. Any reference to prompt or immediate action must occur within one business day.
- All consumer litigation funding contracts, notices, or any of the like that require a signed acknowledgement must have the consumer, the consumer's attorney and licensee's signature.
- Electronic communication is acceptable if it's agreed upon, in writing, by the consumer and attorney, and at least two email addresses are provided by the retained attorney. The consumer litigation funding company must email all email addresses provided and copy the consumer via email on all communications.
- Consumer litigation funding amounts cannot exceed \$500,000 per consumer, per legal claim, regardless of the number of draws the consumer may seek, or regardless if the transaction is rolled over, refinanced, extended, or consolidated.
- Only one document preparation fee may be charged per consumer, per consumer litigation funding transaction, regardless of the number of "draws" the consumer may seek on a single transaction, or regardless if the transaction is rolled over, refinanced, extended, or consolidated.
- Under no circumstances may a consumer litigation funding company refinance, rollover, extend, or consolidate, a consumer litigation funding transaction at the end of the 180 day period, which would have the effect, impact, or result of compounding interest, charges, fees, or the like on the transaction. The funded amount plus charges and fees, or the like, of each transaction must not exceed a rate of 40 percent of the funded amount annually, regardless of how many transactions are provided each year.

- Denominated, as used in section 4 of Senate Bill No. 432, means any amount over the funded amount to include, without limitations, interest, fees or charges. Denominated does not include the one-time document preparation fee.
- Any claimed attorney-client privilege or work-product doctrine shall not apply to the Commissioner or his or her representatives, as it pertains to activities licensed under Senate Bill No. 432. The Division shall have full and complete access to any and all documents relating to consumer funding transactions and the consumer funding transaction company.
- Filing of a consumer litigation funding contract with the Office of the Commissioner does not deem it to be approved or endorsed by the Division. It is the responsibility of a licensee to comply with the statutes and regulations. The contract is subject to the examination process and will be reviewed for compliance during that time.
- For the purpose of section 38 of SB 432, the report due on or before January 31 of each year shall be due starting January 31, 2021.
- A licensee who uses a form or contract written in a language other than English shall cause the document to be translated into English and maintain together a copy of the document and its English translation. A document translated must be:
  - (a) Translated by an interpreter who is:
    - (1) Certified by the Court Administrator in accordance with the provisions of NRS 1.510 and regulations adopted pursuant thereto; or
    - (2) Approved in writing by the Division.
  - (b) Accompanied by a certificate issued by the interpreter. The certificate must:
    - (1) Declare that the translated document is a true and complete translation of the document written in the language other than English;
    - (2) Identify the document written in a language other than English and its English translation;
    - (3) Include the date of translation; and
    - (4) Include the name, address, telephone number and electronic mail address, if any, of the interpreter.