98TH GENERAL ASSEMBLY
State of Illinois
2013 and 2014
SB3169


SYNOPSIS AS INTRODUCED:
New Act
5 ILCS 80/4.25
205 ILCS 670/21 from Ch. 17, par. 5427
815 ILCS 505/2Z from Ch. 121 1/2, par. 2622

Creates the Non-Recourse Civil Litigation Funding Act. Provides that all contracts for non-recourse civil litigation funding shall be written, provide the total funding amount to the customer, itemize one-time fees, allow the customer to cancel contract within 10 business days following receipt of the funding amount without penalty or further obligation, and other specified criteria. Provides that any attorney's fee, Medicare lien, Medicaid lien, or health care provider lien takes priority over any lien of the non-recourse civil litigation funding company. Contains a provision concerning standards and practices of non-recourse civil litigation companies. Provides criteria for non-recourse civil litigation funding companies to receive and retain licenses, the closing of its business or surrendering of the license, and prohibited acts. Contains provisions for enforcement and remedies, rulemaking, bonding, and judicial review. Amends the Regulatory Sunset Act to provide the Non-Recourse Civil Litigation Funding Act to expire on May 31, 2015. Amends the Consumer Installment Loan Act provision concerning the application of the Act to exclude non-recourse civil litigation funding if requested. Amends the Consumer Fraud and Deceptive Business Practices Act to provide that a person who knowingly violates the Non-Recourse Civil Litigation Funding Act commits an unlawful practice. Effective 180 days after becoming law.

LRB098 19406 ZMM 54564 b
AN ACT concerning business.

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

Section 1-1. Short title. This Act may be cited as the Non-Recourse Civil Litigation Funding Act.

Section 1-5. Definitions. In this Act:

"Civil litigation funding company" means a person or entity that enters into a non-recourse civil litigation funding transaction with a consumer. "Civil litigation funding company" includes any affiliate or subsidiary of a civil litigation funding company; an entity or person who buys a whole or partial interest in a non-recourse civil litigation funding, acts as an agent to provide a non-recourse civil litigation funding from a third party for a fee, or acts as an agent for a third party in providing a non-recourse civil litigation funding for a fee, regardless of whether approval or acceptance by the third party is necessary to create a legal obligation for the third party; and any other person or entity if the Department determines that the person or entity is engaged in a transaction that is in substance a disguised non-recourse civil litigation funding or a subterfuge for the purpose of avoiding this Act. Notwithstanding anything to the contrary contained in this Act, a bank, lender, financing
entity, or any other special purpose entity that provides financing to a civil litigation funding company or to which a civil litigation funding company grants a security interest or transfers any rights or interest in a non-recourse civil litigation funding shall not cause the bank, lender, financing entity, or special purpose entity to be deemed a civil litigation funding company. Notwithstanding anything to the contrary contained in this Act, an attorney or accountant who provides services to a consumer shall not be deemed a civil litigation funding company.

"Consumer" means a natural person residing or domiciled in Illinois or who elects to enter into a transaction under this Act in Illinois, whether it be in-person, over the internet, by facsimile, or any other electronic means, and who has a pending legal claim and is represented by an attorney at the time he or she enters into a contract for non-recourse civil litigation funding.

"Contract" means a written agreement between a consumer and a civil litigation funding company that the civil litigation funding company agrees to provide non-recourse civil litigation funding to the consumer in compliance with Article 2.

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

"Funding amount" means the dollar amount of funds provided to the consumer by the non-recourse civil litigation funding
company subsequent to the execution of the contract as consideration for the assignment of or purchase of a contingent right to receive a portion of the proceeds of the legal claim.

"Funding date" means the date on which the funding amount is paid to the consumer by the civil litigation funding company.

"Legal claim" means a civil or statutory claim or action.

"Licensee" means any civil litigation funding company licensed in accordance with Article 3.

"Non-recourse civil litigation funding" means a transaction of any amount in which a civil litigation funding company purchases and a consumer assigns to the civil litigation funding company the contingent right to receive a portion of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim.

"Proceeds" means those funds available for payment to the civil litigation funding company that are remaining from any settlement, verdict, final judgment, insurance payment, or award obtained in the consumer's legal claim after reductions are made under Section 2-15 of this Act.

"Resolution date" means the date the funding amount plus the agreed upon fees from the legal claim are received by the civil litigation funding company.

"Secretary" means the Illinois Secretary of Financial and Professional Regulation.
Article 2. Non-Recourse Civil Litigation Funding

Section 2-5. Contract provisions. All contracts for non-recourse civil litigation funding shall be in writing and comply with all of the following requirements:

(1) The contract shall contain on the front page, appropriately headed and in at least 12-point, bold face type, a chart that clearly contains the following disclosures:

(A) the total funding amount paid to the consumer;

(B) an itemization of one-time fees;

(C) the total dollar amount of the proceeds assigned by the consumer to the civil litigation funding company, set forth up to 1080 days beginning at the 11th business day after the funding date, then at 31 days after the funding date, 61 days after the funding date, 181 days after the funding date, 361 days after the funding date, and 721 days after the funding date; and

(D) a calculation of the annual percentage fee for each 180-day interval.

The Secretary shall prescribe by rule the format of the chart that clearly discloses to the consumer all the information in this subsection. Until the Secretary makes such a rule, each civil litigation funding company must have a chart format approved for distribution by the Secretary.

No contract for non-recourse civil litigation funding shall be enforceable against the consumer unless it complies
entirely with this subsection.

(2) The contract shall provide that the consumer may cancel the contract within 10 business days following the consumer's receipt of the funding amount, without penalty or further obligation. The contract shall contain the following notice written in at least 12-point, bold face type:

"Consumer's right to cancellation: You may cancel this contract without penalty or further obligation within 10 business days after the funding date."

The contract must also specify that in order for the cancellation to be effective, the consumer must either return to the civil litigation funding company the total amount of the funding amount by (a) delivering the civil litigation funding company's uncashed check to the civil litigation company's offices in person within 10 business days after receipt of the funding amount, (b) sending a notice of cancellation via registered or certified mail and include in the mailing a return of the total amount of funding amount in the form of the civil litigation funding company's uncashed check within 10 business days after receipt of the funding amount, or (c) sending a registered, certified or cashier's check or money order, by insured, registered, or certified United States mail, postmarked within 10 business days after receipt of the funding amount, to the address specified in the contract for cancellation.

(3) The contract shall contain all of the following
statements in at least 12-point, bold face type:

"(A) [Insert name of the civil litigation funding company] agrees that it shall have no right to and will not make any decisions with respect to the conduct of the legal claim or any settlement or resolution thereof and that the right to make those decisions remains solely with you and your attorney in the legal claim. [Insert name of the civil litigation funding company] further agrees that it shall have no right to pursue the legal claim on your behalf.

(B) [Insert name of the civil litigation funding company] agrees that it shall only accept: (i) an assignment of a contingent right to receive a portion of the potential proceeds; (ii) the contracted return of the funding amount; and (iii) any agreed upon fees. Any agreed upon fees to [insert name of the civil litigation funding company] shall not be determined as a percentage of your recovery from the legal claim but shall be set as a contractually determined amount based upon intervals of time from the funding date through the resolution date. [Insert name of the civil litigation funding company] is not accepting an assignment of your legal claim.

(C) [Insert name of the civil litigation funding company] agrees that you may make payments on a funding at any time without additional cost or penalty.".

(4) All contracts with the consumer must contain the following statement, in plain language in a box with 15-point,
bold face type, in all capitalized letters, stating the following:

"THE FUNDING AMOUNT AND AGREED UPON FEES SHALL ONLY BE PAID FROM THE PROCEEDS OF YOUR LEGAL CLAIM AND SHALL ONLY BE PAID TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE [INSERT NAME OF THE CIVIL LITIGATION FUNDING COMPANY] ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM."

(5) The contract shall contain the following statement in at least 12-point, bold face type located immediately above the space where the consumer's signature is required:

"Do not sign this Agreement before you read it completely or if it contains any blank spaces. You are entitled to a completely filled-in copy of this Agreement. Before you sign this Agreement you should obtain the advice of an attorney. Depending on the circumstances, you may want to consult a tax, public, or private benefit planning or financial professional. You acknowledge that your attorney in the legal claim has provided no tax, public, or private benefit planning regarding this transaction. You further understand and agree that the funds you receive from [insert name of the civil litigation funding company] shall not be used to pay for or applied to the payment of attorney's fees or litigation costs related to your legal claim."

(6) The executed contract shall contain a written
acknowledgment by the consumer that he or she has reviewed the contract in its entirety.

(7) The non-recourse civil litigation funding company shall provide the consumer's attorney with a written notification of the non-recourse civil litigation funding provided to the consumer 3 business days before the funding date by way of postal mail, courier service, facsimile, e-mail return receipt acknowledged, or other means of proof of delivery method unless there is a written acknowledgment by the attorney representing the consumer in the legal claim as to the terms of the contract. Notwithstanding notice of the non-recourse civil litigation funding, the consumer's attorney is not responsible for paying or ensuring payment of the consumer's obligation.

(8) The contracted return of the funding amount, plus any agreed upon fees assigned to the civil litigation funding company on the resolution date shall not be determined as a percentage of the recovery from the legal claim but shall be set as a contractually determined amount based upon intervals of time from the funding date through the resolution date.

Section 2-10. Contracted fee amount.

(a) The civil litigation funding company shall offer the consumer the option of either entering into a conventional loan under the Consumer Installment Loan Act or entering into a non-recourse civil litigation funding.
If the consumer elects to enter into a conventional loan agreement under the Consumer Installment Loan Act, the interest charged shall not exceed an annual percentage rate of 36%.

If the consumer elects to enter into a non-recourse civil litigation funding, the company shall not charge a fee in excess of 36% annual percentage rate plus a deferment fee not to exceed 3% for each month the funding is outstanding with compounding to occur no more often than monthly.

(b) No additional fees shall be applied for any period of time beyond 1080 days from the funding date.

(c) Except for the fees set forth in this Section and Section 20, the civil litigation funding company shall not impose on a consumer any additional finance charges, interest, fees, or charges of any sort for any purpose.

Section 2-12. Charges permitted.

(a) A licensee may charge an acquisition charge not to exceed 8% of the amount funded or $100, whichever is less.

(b) A licensee may charge an expedited funds delivery option charge not to exceed the actual cost of delivery or $20, whichever is less. Expedited funds delivery options, including, but not limited to, overnight delivery, electronic fund transfers, and Automated Clearing House (ACH) transactions may be offered to the consumer as a choice of the method of the delivery of funds. The fund delivery charge is fully earned at the time that each funding transaction is made
and shall not be subject to refund. Details and receipts of
delivery shall be provided in an invoice to the consumer no
more than 10 business days after the funding date. A no-charge
delivery option must be offered to the consumer as a choice.

Section 2-15. Claim priorities. Any lien arising out of the
underlying consumer's legal claim for subrogation claims,
attorney fees, attorney liens, and litigation costs, health
care providers, employers in worker's compensation
proceedings, health insurers, employers with self-funded
health care plans, Medicare, and Public Aid shall be satisfied
before and take priority over any claim of the civil litigation
funding company. All other holders of liens, security
interests, or subrogation claims shall take priority over the
civil litigation funding company to the extent allowed by law.

Section 2-20. Standards and practices. Each civil
litigation funding company shall adhere to the following:

(1) The civil litigation funding company shall not pay or
offer to pay any compensation to any attorney, law firm,
medical provider, chiropractor, physical therapist, or any of
their employees for referring a consumer to the civil
litigation funding company. The civil litigation funding
company agrees not to accept any compensation from any
attorney, law firm, medical provider, chiropractor, physical
therapist, or any of their employees, other than the funding
amount and any agreed upon fees the consumer assigned to the
civil litigation funding company out of the potential proceeds
of the legal claim. If a lawyer or law firm represents one or
more consumers with outstanding civil litigation fundings from
the same civil litigation funding company, that civil
litigation funding company may not provide any type of funding
to the lawyer or law firm.

(2) The civil litigation funding company shall not
advertise false or intentionally misleading information
regarding its product or services.

(3) The civil litigation funding company shall not
knowingly provide funding to a consumer who has previously sold
and assigned an amount of the potential proceeds of his or her
legal claim to another civil litigation funding company without
first purchasing that civil litigation funding company's
entire accrued balance unless otherwise agreed to in writing by
the consumer and all civil litigation funding companies that
provided non-recourse civil litigation funding to the
consumer.

(4) The civil litigation funding company shall not offer
single premium credit life, disability, or unemployment
insurance that will be financed through a non-recourse civil
litigation funding transaction.

(5) For non-English speaking consumers, the principal
terms of the contract must be translated in writing into the
consumer's primary language. The consumer must sign the
translated document containing the principal terms and initial each page and the translator must sign an affirmation confirming that the principal terms have been presented to the consumer in the consumer's primary language and acknowledged by the consumer. Principal terms shall include all items that must be disclosed by Section 2-5.

(6) The civil litigation funding company shall not knowingly enter into a non-recourse civil litigation funding contract with a consumer where the consumer's legal claim is a pending class action lawsuit at the time of the funding. The civil litigation funding company may not discuss a consumer's choice to join a class action lawsuit other than to confirm that a consumer has or has not chosen to join a class action lawsuit. Should any legal claim in which a plaintiff has received non-recourse civil litigation funding become a class action matter, no further funding shall be permitted. The civil litigation funding company is prohibited from advancing, loaning, assigning, or otherwise providing funds, directly or indirectly, to any attorney, law firm, or related entity for the purposes of researching, investigating, developing, prosecuting, or otherwise representing parties in class action mass tort litigation.

(7) An attorney or law firm shall not have a financial interest in the civil litigation funding company providing non-recourse civil litigation funding to a consumer represented by that attorney or law firm.
(8) No communication between a consumer's attorney and a civil litigation funding company pertaining to a consumer's non-recourse civil litigation funding transaction shall limit, waive, or abrogate any statutory or common-law privilege, including the attorney-client privilege or the work-product doctrine.

(9) The return of the funding amount to the civil litigation funding company, plus any agreed upon fees, shall be rendered only out of the proceeds, if any, of the realized settlement, judgment, award, or verdict the consumer may receive from the legal claim. Under no circumstances shall the civil litigation funding company have recourse for the funding amount beyond the consumer's proceeds from the legal claim.

(10) The civil litigation funding company shall have no authority to make any decisions with respect to the conduct of the litigation of the legal claim or any settlement or resolution thereof. The right to make those decisions remains solely with the consumer and the consumer's attorney representing the consumer in the legal claim. The civil litigation funding company shall have no right to pursue the legal claim on the consumer's behalf.

(11) The civil litigation funding company shall only accept an assignment of a contingent right to receive a portion of the potential proceeds, rather than an assignment of the legal claim. The contracted return of the funding amount, plus any agreed upon fees assigned to the civil litigation funding
company, shall not be determined as a percentage of the total recovery from the legal claim, but shall be set as a contractually determined amount based upon intervals of time from the funding date through the resolution date.

(12) Notwithstanding subsection (9) of this Section, the civil litigation funding company shall allow the consumer to make payments on a funding at any time without additional cost or penalty.

(13) Contact between the civil litigation funding company and the consumer shall be subject to the following limitations:

(A) Neither a civil litigation funding company, nor any person acting on behalf of a civil litigation funding company, shall contact a consumer prior to the consumer obtaining legal representation and initiating a legal claim.

(B) Neither a civil litigation funding company, nor any person acting on behalf of a civil litigation funding company, shall contact the consumer after the funding date in order to influence any decisions with respect to the conduct of the legal claim or any settlement or resolution thereof. Notwithstanding the foregoing, the civil litigation funding company may contact the consumer or the consumer's attorney to obtain the status of the legal claim and may contact the consumer after the funding date to obtain updated attorney contact information.

(C) After the resolution date, neither a civil
litigation funding company, nor any person acting on behalf of a civil litigation funding company, shall seek to collect additional funds or threaten civil action for any deficiency.

Section 2-25. Information; reporting and examination.
(a) A licensee shall keep and use books, accounts, and records that will enable the Secretary to determine if the licensee is complying with the provisions of this Act and maintain any other records as required by the Secretary.

(b) A licensee shall collect and maintain information annually for a report that shall disclose in detail and under appropriate headings:

(1) the total number of non-recourse civil litigation fundings made during the previous calendar year;

(2) the total number of non-recourse civil litigation fundings outstanding as of December 31st of the preceding calendar year;

(3) the minimum, maximum, and average amount of non-recourse civil litigation fundings made during the preceding calendar year;

(4) the average annual fee rate of the non-recourse civil litigation fundings made during the preceding year; and

(5) the total number of non-recourse civil litigation funding transactions in which the civil litigation funding
company received the return of the funding amount, plus any agreed upon fees; the total number of non-recourse civil litigation funding transactions for which the civil litigation funding company received no return of the funding amount or any fees; and the total number of non-recourse civil litigation funding transactions in which the civil litigation funding company received an amount less than the contracted amount.

The report shall be verified by the oath or affirmation of the Chief Executive Officer, Chief Financial Officer, or other duly authorized representative of the licensee. The report must be filed with the Secretary no later than March 1 of the year following the year for which the report discloses the information specified in this subsection (b). The Secretary may impose a fine of $50 per day upon the licensee for each day beyond the filing deadline that the report is not filed.

(c) The Department shall have the authority to conduct examinations at any time of the books, records, and non-recourse civil litigation funding documents of a licensee or other company or person doing business without the required license. Any licensee being examined must provide to the Department convenient and free access at all reasonable hours at its office or location to all books, records, non-recourse civil litigation funding documents. The officers, directors, and agents of the litigation funding company must facilitate the examination and aid in the examination so far as it is in
their power to do so.

Section 2-30. Applicability.

(a) The contingent right to receive a portion of the potential proceeds of a legal claim is assignable and valid for the purposes of obtaining funding from a licensee under this Section.

(b) Nothing in this Act shall cause any non-recourse civil litigation funding transaction conforming to this Act to be deemed to be a "loan or investment contract" or subject to the restrictions or provisions governing loans or investment contracts set forth in the Interest Act, the Consumer Installment Loan Act, or other provisions of Illinois law.

Article 3. Licensure.

Section 3-1. Licensure requirement.

(a) Except as provided in subsection (b), on and after the effective date of this Act, a civil litigation funding company as defined by Section 1-5 must be licensed by the Department as provided in this Article.

(b) A civil litigation funding company licensed on the effective date of this Act under the Consumer Installment Loan Act need not comply with subsection (a) until the Department takes action on the civil litigation funding company's application for a non-recourse civil litigation funding
license. The application must be submitted to the Department within 3 months after the effective date of this Act. If the application is not submitted within 3 months after the effective date of this Act, the civil litigation funding company is subject to subsection (a).

Section 3-5. Licensure.

(a) An application for a license shall be in writing and in a form prescribed by the Secretary. Applicants must also submit a non-refundable application fee of $1,500, due at the time of the application. The Secretary may not issue a non-recourse civil litigation funding license unless and until the following findings are made:

(1) that the financial responsibility, experience, character, and general fitness of the applicant are such as to command the confidence of the public and to warrant the belief that the business will be operated lawfully and fairly and within the provisions and purpose of this Act;

(2) that the applicant has submitted such other information as the Secretary may deem necessary; and

(3) that the applicant is a current licensee under the Consumer Installment Loan Act.

(b) A license shall be issued for no longer than one year and no renewal of a license may be provided if a licensee has substantially violated this Act and has not cured the violation to the satisfaction of the Department.
(c) A licensee shall appoint, in writing, the Secretary as attorney-in-fact upon whom all lawful process against the licensee may be served with the same legal force and validity as if served on the licensee. A copy of the written appointment, duly certified, shall be filed in the office of the Secretary, and a copy thereof certified by the Secretary shall be sufficient evidence to subject a licensee to jurisdiction in a court of law. This appointment shall remain in effect while any liability remains outstanding in this State against the licensee. When summons is served upon the Secretary as attorney-in-fact for a licensee, the Secretary shall immediately notify the licensee by registered mail, enclosing the summons and specifying the day of service.

(d) A licensee must pay an annual fee of $1,000. In addition to the annual license fee, the reasonable expense of any examination or hearing by the Secretary under any provisions of this Act shall be borne by the licensee. If a licensee fails to submit an application for renewal by December 31st of the then current year, its license shall automatically expire; however, the Secretary, in his or her discretion, may reinstate an expired license upon:

(1) payment of the annual fee within 30 days of the date of expiration; and

(2) proof of good cause for failure to renew.

(3) that the applicant is a current licensee under the Consumer Installment Loan Act.
(e) No licensee shall conduct the business of providing non-recourse civil litigation funding under this Act within any office, suite, room, or place of business in which any other business is solicited or engaged unless the other business is licensed by the Department and, in the opinion of the Secretary, the other business would not be contrary to the best interests of consumers and is authorized by the Secretary in writing.

(f) The Secretary shall maintain a list of licensees that shall be available to interested consumers and lenders and the public. The Secretary shall maintain a toll-free number whereby consumers may obtain information about licensees. The Secretary shall also establish a complaint process under which an aggrieved consumer may file a complaint against a licensee or non-licensee who violates any provision of this Act.

Section 3-10. Closing of business; surrender of license. At least 10 days before a licensee ceases operations, closes the business, or files for bankruptcy, the licensee shall:

(1) Notify the Department of its intended action in writing.

(2) With the exception of filing for bankruptcy, 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 or after the surrender or entitle the licensee to a return of any part of the annual
license fee.

(3) Notify the Department of the location where the books, accounts, contracts, and records will be maintained. The accounts, books, records, and contracts shall be maintained and serviced by the licensee, by another licensee under this Act, or by the Department.


Section 4-5. Prohibited acts. A licensee or unlicensed person or entity entering into non-recourse civil litigation funding may not commit, or have committed, on behalf of the licensee or unlicensed person or entity, any of the following acts:

(1) Threatening to use or using the criminal process in this or any other state to collect the assignment.

(2) Using any device or agreement that would have the effect of charging or collecting more fees or charges than allowed in this Act, including, but not limited to, entering into a different type of transaction with the consumer.

(3) Engaging in unfair, deceptive, or fraudulent practices related to the non-recourse civil litigation funding.

(4) Threatening to take any action against a consumer that is prohibited by this Act or making any misleading or deceptive statements regarding the non-recourse civil litigation funding.
(5) Making a misrepresentation of a material fact by an applicant for licensure in obtaining or attempting to obtain a license.

(6) Including any of the following provisions in non-recourse civil litigation funding contracts:

   (A) a confession of judgment clause;

   (B) a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers; or

   (C) a provision that the consumer agrees not to assert any claim or defense arising out of the contract.

(7) Taking any power of attorney.

Section 4-10. Enforcement and remedies.

(a) The remedies provided in this Act are cumulative and apply to persons or entities subject to this Act.

(b) Any material violation of this Act, including the commission of an act prohibited under Section 4-5, constitutes a violation of the Consumer Fraud and Deceptive Business Practices Act.

(c) If any provision of the written agreement described in Section 2-5 violates this Act, then that provision is unenforceable against the consumer.

(d) Subject to the Illinois Administrative Procedure Act, the Secretary may hold hearings, make findings of fact, conclusions of law, issue cease and desist orders, have the
power to issue fines of up to $10,000 per violation, refer the
matter to the appropriate law enforcement agency for
prosecution under this Act, and suspend or revoke a license
granted under this Act. All proceedings shall be open to the
public.

(e) 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 provisions
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. In addition to any other action
authorized by this Act, if the Secretary determines that a
civil litigation funding company is engaged in or is believed
to be engaged in activities that may constitute a violation of
this Act and the Secretary is able to show that an emergency
exists, the Secretary may suspend the civil litigation funding
company's license for a period not exceeding 180 calendar days.
The cease and desist order and emergency suspension permitted
by this subsection (e) may be issued prior to a hearing.

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, return
receipt requested. Service by certified mail shall be deemed
completed when the notice is deposited in the U.S. Mail.

Within 10 business 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 30 days after the request for a hearing unless otherwise agreed to by the parties. The Secretary shall have the authority to adopt rules for the administration of this Section.

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.

The powers vested in the Secretary by the subsection (e) are additional to any and all other powers and remedies vested in the Secretary by law, and nothing in this subsection (e) 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.

(f) The Secretary may, after 10 business days notice by registered mail to the licensee at the address set forth in the license stating the contemplated action an in general the grounds therefore, fine the licensee an amount not exceeding $10,000 per violation, or revoke or suspend any license issued by the Department if found that:

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

(2) any fact or condition exists that, 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.

No revocation, suspension, or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the civil litigation company and a consumer.

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

In every case in which 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, return receipt requested. Service by certified mail shall be deemed completed when the notice is deposited in the U.S. Mail.

An order assessing a fine, an order revoking or suspending a license, or an order denying or refusing to renew 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. In the event a hearing is requested, the order shall be stayed until final
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.

The hearing shall be held at a 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.

The costs of administrative hearings conducted under this Section shall be paid by the licensee.

(g) All moneys received by the Department under this Act shall be deposited in the Financial Institutions Fund.

Section 4-15. Bonding.

(a) A person or entity engaged in non-recourse civil litigation funding under this Act shall post a bond to the Department in the amount of $50,000 per license or irrevocable letter of credit issued and confirmed by a financial institution authorized by law to transact business in the State of Illinois.

(b) A bond posted under subsection (a) must continue in effect for the period of licensure and for 3 additional years.
if the bond is still available. The bond must be available to
pay damages and penalties to be a consumer harmed by a
violation of this Act.

(c) From time to time the Secretary may require a licensee
to file a bond in an additional sum if the Secretary determines
it to be necessary. In no case shall the bond be more than the
outstanding liabilities of the licensee.

Section 4-20. Reporting of violations. The Department
shall report to the Attorney General all material violations of
this Act of which it becomes aware.

Section 4-25. Rulemaking.

(a) The Department may make and enforce such reasonable
rules, regulations, directions, orders, decisions, and
findings as the execution and enforcement of the provisions of
this Act require, and as are not inconsistent therewith. All
rules, regulations, and directions of a general character shall
be made available to all licensees in an electronic format.

(b) The Department may adopt rules in connection with the
activities of licensees that are necessary and appropriate for
the protection of the consumers in this State. These rules
shall be consistent with this Act.

Section 4-28. Confidentiality. All information collected
by the Department under an examination or investigation of a
civil litigation funding company, including, but not limited to, information collected to investigate any complaint against a civil litigation funding company filed with the Department, shall be maintained for the confidential use of the Department and shall not be disclosed. The Department may not disclose such information 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. Information and documents disclosed to a federal, State, county, or local law enforcement agency shall not be disclosed by the agency for any purpose to any other agency or person. An order issued by the Department against a civil litigation funding company shall be a public record and any documents produced in discovery, filed with the administrative law judge, or introduced at hearing shall be a public record, except as otherwise prohibited by law.

Section 4-30. Judicial review. All final administrative decisions of the Department under this Act are subject to judicial review under the provisions of the Administrative Review Law and any rules adopted pursuant thereto.

Section 4-35. Waivers. There shall be no waiver of any provision of this Act.
Section 4-40. Superiority of Act. To the extent this Act conflicts with any other State laws, this Act is superior and supersedes those laws for the purposes of regulating non-recourse civil litigation funding in Illinois.

Section 4-45. Severability. The provisions of this Act are severable under Section 1.31 of the Statute of Statutes.

Section 4-48. Consumer protection study. The Department shall conduct a study to be reported to the Governor and the leaders of the General Assembly no later than February 1, 2015, addressing the adequacy of the consumer protections contained in this Act. The study shall include, but not be limited to: (1) an analysis of the average percentage of a consumer's settlement that is used to return the funding amount in each transaction; (2) a survey of consumer complaints filed against civil litigation funding companies; (3) a description of the benefits and shortcomings of non-recourse civil litigation funding to consumers; and (4) any reforms that the Secretary recommends to better regulate civil litigation funding companies.

Article 90. Amendatory Provisions

Section 90-1. The Regulatory Sunset Act is amended by changing Section 4.25 as follows:
Sec. 4.25. The following Act is repealed on January 1, 2015: The Genetic Counselor Licensing Act.

(b) The following Act is repealed on May 31, 2015: The Non-Recourse Civil Litigation Funding Act.

(Source: P.A. 93-1041, eff. 9-29-04.)

Section 90-5. The Consumer Installment Loan Act is amended by changing Section 21 as follows:

(205 ILCS 670/21) (from Ch. 17, par. 5427)

Sec. 21. Application of Act. This Act does not apply to any person, partnership, association, limited liability company, or corporation doing business under and as permitted by any law of this State or of the United States relating to banks, savings and loan associations, savings banks, credit unions, or licensees under the Residential Mortgage License Act for residential mortgage loans made pursuant to that Act. This Act does not apply to business loans. This Act does not apply to payday loans. Except as provided in Section 2-10 of the Non-Recourse Civil Litigation Funding Act, this Act does not apply to non-recourse civil litigation funding.

(Source: P.A. 94-13, eff. 12-6-05.)
Section 90-10. The Consumer Fraud and Deceptive Business Practices Act is amended by changing Section 2Z as follows:

(815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

Sec. 2Z. Violations of other Acts. Any person who knowingly violates the Automotive Repair Act, the Automotive Collision Repair Act, the Home Repair and Remodeling Act, the Dance Studio Act, the Physical Fitness Services Act, the Hearing Instrument Consumer Protection Act, the Illinois Union Label Act, the Job Referral and Job Listing Services Consumer Protection Act, the Travel Promotion Consumer Protection Act, the Credit Services Organizations Act, the Automatic Telephone Dialers Act, the Pay-Per-Call Services Consumer Protection Act, the Telephone Solicitations Act, the Illinois Funeral or Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales Act, the High Risk Home Loan Act, the Payday Loan Reform Act, the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the Internet Caller Identification Act, paragraph (6) of subsection (k) of Section 6-305 of the Illinois Vehicle Code, Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150, or 18d-153 of the Illinois Vehicle Code, Article 3 of the Residential Real Property Disclosure Act, the Automatic
Contract Renewal Act, the Non-Recourse Civil Litigation Funding Act, or the Personal Information Protection Act commits an unlawful practice within the meaning of this Act.

(Source: P.A. 96-863, eff. 1-19-10; 96-1369, eff. 1-1-11; 96-1376, eff. 7-29-10; 97-333, eff. 8-12-11.)

Section 99. Effective date. This Act takes effect 180 days after becoming law.