98TH GENERAL ASSEMBLY
State of Illinois
2013 and 2014
SB3391

Introduced 2/14/2014, by Sen. Dale A. Righter

SYNOPSIS AS INTRODUCED:
See Index

Creates the Non-Recourse Consumer Lawsuit Funding Act. Provides that all contracts for non-recourse consumer lawsuit 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 or medical lien takes priority over any lien of the non-recourse consumer lawsuit funding company. Contains a provision concerning standards and practices of non-recourse consumer lawsuit funding companies. Provides criteria for non-recourse consumer lawsuit funding companies to receive and retain licenses, the closing of its business or surrendering of the license, and prohibited acts. Contains provisions for enforcement, rulemaking, bonding, and judicial review. Provides that the total amount of financing provided by a non-recourse consumer lawsuit funding company per consumer per legal claim shall not exceed $40,000. Provides that under no circumstances shall the total amount of charges, interest, fees, or any other charges, when taken together, exceed 80% of the proceeds from the legal claim. Amends the Regulatry Sunset Act to provide for the repeal of the Non-Recourse Consumer Lawsuit Funding Act on May 31, 2015. Amends the Consumer Fraud and Deceptive Business Practices Act to provide that a person who knowingly violates the Non-Recourse Consumer Lawsuit Funding Act commits an unlawful practice. Amends the Consumer Installment Loan Act. Provides that no licensee shall engage in the business of providing non-recourse consumer lawsuit funding, except in compliance with that Act. Effective immediately.

LRB098 19745 ZMM 54958 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR
AN ACT concerning regulation.

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

ARTICLE 1.

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

Section 1-5. Definitions. In this Act:

"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 consumer lawsuit funding.

"Contract" means a written agreement between a consumer and a non-recourse consumer lawsuit funding company that the non-recourse consumer lawsuit funding company agrees to provide non-recourse consumer lawsuit 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 consumer lawsuit 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 non-recourse consumer lawsuit funding company.

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

"Licensee" means any non-recourse consumer lawsuit funding company licensed in accordance with Article 3.

"Non-recourse consumer lawsuit funding" means a lending transaction, regulated under this Act, of any amount in which a non-recourse consumer lawsuit funding company purchases and a consumer assigns to the non-recourse consumer lawsuit 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 as repayment of the loan principle and accrued interest.

"Non-recourse consumer lawsuit funding company" means a person or entity that enters into a non-recourse consumer lawsuit funding transaction with a consumer. "Non-recourse consumer lawsuit funding company" includes any affiliate or subsidiary of a non-recourse consumer lawsuit funding company; an entity or person who buys a whole or partial interest in a non-recourse consumer lawsuit funding, acts as an agent to provide non-recourse consumer lawsuit funding from a third
party for a fee, or acts as an agent for a third party in providing non-recourse consumer lawsuit 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 consumer lawsuit 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 non-recourse consumer lawsuit funding company or to which a non-recourse consumer lawsuit funding company grants a security interest or transfers any rights or interest in non-recourse consumer lawsuit funding shall not cause the bank, lender, financing entity, or special purpose entity to be deemed a non-recourse consumer lawsuit 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 non-recourse consumer lawsuit funding company.

"Proceeds" means those funds available for payment to the non-recourse consumer lawsuit 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
non-recourse consumer lawsuit funding company.
"Secretary" means the Illinois Secretary of Financial and
Professional Regulation.

ARTICLE 2. Non-Recourse Consumer Lawsuit Funding

Section 2-5. Contract provisions. All contracts for
non-recourse consumer lawsuit 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 owed by the consumer to the
non-recourse consumer lawsuit funding company, set forth
up to 1,080 days beginning at the 11th business day after
the funding date, then at 30 days after the funding date
and at every 30 days thereafter; the total dollar amount
shall be calculated using the identical methodology used by
the non-recourse consumer lawsuit funding company to
calculate the contracted fee amount under Section 2-10.
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 non-recourse consumer lawsuit funding company must have a chart format approved for distribution by the Secretary.

No contract for non-recourse consumer lawsuit funding shall be enforceable against the consumer unless it complies entirely with this Section 2-5.

(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 non-recourse consumer lawsuit funding company the total amount of the funding amount by (a) delivering the non-recourse consumer lawsuit funding company's uncashed check to the non-recourse consumer lawsuit funding 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 non-recourse consumer lawsuit 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 non-recourse consumer lawsuit 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 non-recourse consumer lawsuit funding company] further agrees that it shall have no right to pursue the legal claim on your behalf.

(B) [Insert name of the non-recourse consumer lawsuit 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 non-recourse consumer lawsuit 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 non-recourse consumer
lawsuit funding company] is not accepting an assignment of your legal claim.

(C) [Insert name of the non-recourse consumer lawsuit funding company] agrees that you may make payments on a funding at any time without additional cost or penalty.

(D) [Insert name of the non-recourse consumer lawsuit funding company] is not a law firm and is prohibited from rendering legal advice. Advice about the conduct of the legal claim or any settlement or resolution shall be directed to a properly licensed attorney.”.

(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 NON-RECOERCSE CONSUMER LAWSUIT 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 non-recourse consumer lawsuit 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 consumer lawsuit funding company shall provide the consumer's attorney with a written notification of the non-recourse consumer lawsuit 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. No communication between a consumer's attorney and a non-recourse consumer lawsuit funding company pertaining to a consumer's non-recourse consumer lawsuit funding transaction shall limit, waive, or abrogate any
statutory or common-law privilege, including the
attorney-client privilege or the work-product doctrine.
Notwithstanding notice of the non-recourse consumer lawsuit
funding, the consumer's attorney is not responsible for paying
or ensuring payment of the consumer's obligation.

(8) Except as provided under subsection (d) of Section 2-10
of this Act, the contracted return of the funding amount, plus
any agreed upon fees assigned to the non-recourse consumer
lawsuit 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 total amount of financing provided by a
non-recourse consumer lawsuit funding company per consumer per
legal claim shall not exceed $40,000.

The company shall not charge a fee in excess of a 40% annual percentage rate.

For the purposes of this Section, the annual percentage rate shall be calculated in accordance with the federal Truth in Lending Act.

(b) No additional fees shall be applied for any period of
time beyond 1,080 days from the funding date.

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

(d) Under no circumstances shall the total amount of finance charges, interest, fees, or any other charges, when taken together, exceed 80% of the proceeds from the legal claim.

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 non-recourse consumer lawsuit funding company. All other holders of liens, security interests, or subrogation claims shall take priority over the non-recourse consumer lawsuit funding company to the extent allowed by law.

Section 2-20. Standards and practices. Each non-recourse consumer lawsuit funding company shall adhere to the following:

(1) The non-recourse consumer lawsuit 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 non-recourse consumer lawsuit funding company. The non-recourse consumer lawsuit 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 non-recourse consumer lawsuit funding company out of the potential proceeds of the legal claim. If a lawyer or law firm represents one or more consumers with outstanding non-recourse consumer lawsuit fundings from the same non-recourse consumer lawsuit funding company, that
non-recourse consumer lawsuit funding company may not provide any type of funding to the lawyer or law firm.

(2) The non-recourse consumer lawsuit funding company shall not advertise false or intentionally misleading information regarding its product or services.

(3) The non-recourse consumer lawsuit 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 non-recourse consumer lawsuit funding company without first purchasing that non-recourse consumer lawsuit funding company's entire accrued balance unless otherwise agreed to in writing by the consumer and all non-recourse consumer lawsuit funding companies that provided non-recourse consumer lawsuit funding to the consumer.

(4) The non-recourse consumer lawsuit funding company shall not offer single premium credit life, disability, or unemployment insurance that will be financed through a non-recourse consumer lawsuit 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 non-recourse consumer lawsuit funding company
shall not knowingly enter into a non-recourse consumer lawsuit
funding contract with a consumer where the consumer's legal
claim is a pending class action lawsuit at the time of the
funding. The non-recourse consumer lawsuit 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 consumer lawsuit funding
become a class action matter, no further funding shall be
permitted. The non-recourse consumer lawsuit 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, in-
vestigating, developing, prosecuting, or otherwise representing parties in class action mass tort litigation.

(7) The return of the funding amount to the non-recourse
consumer lawsuit funding company, plus any agreed upon fees,
shall be rendered only out of the funds, if any, of the
realized settlement, judgment, award, or verdict the consumer
may receive from the legal claim. Under no circumstances shall
the non-recourse consumer lawsuit funding company have
recourse for the funding amount beyond 80% of the consumer's
proceeds from the legal claim.
(8) The non-recourse consumer lawsuit funding company shall have no authority to advise the consumer on any legal matters or 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 non-recourse consumer lawsuit funding company shall have no right to pursue the legal claim on the consumer's behalf.

(9) The non-recourse consumer lawsuit 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 non-recourse consumer lawsuit 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.

(10) Notwithstanding subsection (8) of this Section, the non-recourse consumer lawsuit funding company shall allow the consumer to make payments on a funding at any time without additional cost or penalty.

(11) Contact between the non-recourse consumer lawsuit funding company and the consumer shall be subject to the following limitations:
(A) Neither a non-recourse consumer lawsuit funding company, nor any person acting on behalf of a non-recourse consumer lawsuit funding company, shall contact a consumer prior to the consumer obtaining legal representation and initiating a legal claim.

(B) Neither a non-recourse consumer lawsuit funding company, nor any person acting on behalf of a non-recourse consumer lawsuit 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 non-recourse consumer lawsuit funding company may contact the consumer to obtain the status of the legal claim and updated attorney contact information.

(C) After the resolution date, neither a non-recourse consumer lawsuit funding company, nor any person acting on behalf of a non-recourse consumer lawsuit 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 consumer lawsuit fundings made during the previous calendar year;

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

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

(4) the average annual percentage rate of the non-recourse consumer lawsuit fundings made during the preceding year; and

(5) the total number of non-recourse consumer lawsuit funding transactions in which the non-recourse consumer lawsuit funding company received the return of the funding amount, plus any agreed upon fees; the total number of non-recourse consumer lawsuit funding transactions for which the non-recourse consumer lawsuit funding company received no return of the funding amount or any fees; and the total number of non-recourse consumer lawsuit funding transactions in which the non-recourse consumer lawsuit 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.

For the purposes of this Section, the annual percentage rate shall be calculated in accordance with the federal Truth in Lending Act.

(c) The Department shall have the authority to conduct examinations at any time of the books, records, and non-recourse consumer lawsuit 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 consumer lawsuit funding documents. The officers, directors, and agents of the non-recourse consumer lawsuit funding company must facilitate the examination and aid in the examination so far as it is in their power to do so. The Secretary shall, by rule, set the fee to be charged for each examination day, including travel expenses for out-of-state licensed locations. The fee shall reasonably reflect actual costs.

Section 2-30. Applicability. 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.

Section 2-35. Limitation to this Act. Except as provided under subsection (b) of Section 3-1 of this Act, non-recourse consumer lawsuit funding shall not be offered under any other Act, including, but not limited to, the Consumer Installment Loan Act.

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 non-recourse consumer lawsuit funding company as defined by Section 1-5 must be licensed by the Department as provided in this Article.

(b) A non-recourse consumer lawsuit 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 non-recourse consumer lawsuit funding company's application for a non-recourse consumer lawsuit 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 non-recourse consumer lawsuit 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 $2,500, due at the time of the application. The Secretary may not issue a non-recourse consumer lawsuit 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 consumer lawsuit 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 consumer lawsuit 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 consumer lawsuit 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 consumer lawsuit 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 consumer lawsuit 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 and any other applicable Department statutes and rules, 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 non-recourse consumer lawsuit 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 non-recourse consumer lawsuit 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 non-recourse consumer lawsuit funding 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 administrative order is entered.

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 consumer lawsuit 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 non-recourse consumer lawsuit funding company, including, but not limited to, information collected to investigate any complaint against a non-recourse consumer lawsuit 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 non-recourse consumer lawsuit 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 4-45. 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 non-recourse consumer lawsuit funding companies; (3) a description of the benefits and shortcomings of non-recourse consumer lawsuit funding to consumers; and (4) any reforms that the Secretary recommends to better regulate non-recourse consumer lawsuit funding companies.

ARTICLE 90. Amendatory Provisions

Section 90-1. The Regulatory Sunset Act is amended by changing Section 4.25 as follows:

(5 ILCS 80/4.25)


(a) 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 Consumer Lawsuit Funding Act.
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 Consumer Lawsuit 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 90-15. The Consumer Installment Loan Act is amended by changing Section 1 as follows:

(205 ILCS 670/1) (from Ch. 17, par. 5401)

Sec. 1. License required to engage in business. No person, partnership, association, limited liability company, or corporation shall engage in the business of making loans of money in a principal amount not exceeding $40,000, and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this Act after first obtaining a license from the Director of Financial Institutions (hereinafter called the Director). No licensee, or employee or affiliate thereof, that is licensed under the Payday Loan Reform Act shall obtain a license under this Act except that a licensee under the Payday Loan Reform Act may obtain a license under this Act for the exclusive purpose and use of making title-secured loans, as defined in subsection (a) of Section 15
of this Act and governed by Title 38, Section 110.300 of the Illinois Administrative Code. For the purpose of this Section, "affiliate" means any person or entity that directly or indirectly controls, is controlled by, or shares control with another person or entity. A person or entity has control over another if the person or entity has an ownership interest of 25% or more in the other. **No licensee shall engage in the business of providing non-recourse consumer lawsuit funding, as defined by the Non-Recourse Consumer Lawsuit Funding Act, except in compliance with that Act.**

(Source: P.A. 96-936, eff. 3-21-11; 97-420, eff. 1-1-12.)

Section 99. Effective date. This Act takes effect upon becoming law.
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Statutes amended in order of appearance

New Act
5 ILCS 80/4.25
815 ILCS 505/2Z from Ch. 121 1/2, par. 262Z
205 ILCS 670/1 from Ch. 17, par. 5401