



Rep. Lou Lang

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1 AMENDMENT TO SENATE BILL 3322

2 AMENDMENT NO. _____. Amend Senate Bill 3322, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

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

7 Section 1-5. Definitions. In this Act:

8 "Civil litigation funding company" means a person or entity
9 that enters into a non-recourse civil litigation funding
10 transaction with a consumer. "Civil litigation funding
11 company" includes any affiliate or subsidiary of a civil
12 litigation funding company; an entity or person who buys a
13 whole or partial interest in a non-recourse civil litigation
14 funding, acts as an agent to provide a non-recourse civil
15 litigation funding from a third party for a fee, or acts as an
16 agent for a third party in providing a non-recourse civil

1 litigation funding for a fee, regardless of whether approval or
2 acceptance by the third party is necessary to create a legal
3 obligation for the third party; and any other person or entity
4 if the Department determines that the person or entity is
5 engaged in a transaction that is in substance a disguised
6 non-recourse civil litigation funding or a subterfuge for the
7 purpose of avoiding this Act. Notwithstanding anything to the
8 contrary contained in this Act, a bank, lender, financing
9 entity, or any other special purpose entity that provides
10 financing to a civil litigation funding company or to which a
11 civil litigation funding company grants a security interest or
12 transfers any rights or interest in a non-recourse civil
13 litigation funding shall not cause the bank, lender, financing
14 entity, or special purpose entity to be deemed a civil
15 litigation funding company. Notwithstanding anything to the
16 contrary contained in this Act, an attorney or accountant who
17 provides services to a consumer shall not be deemed a civil
18 litigation funding company.

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

26 "Contract" means a written agreement between a consumer and

1 a civil litigation funding company that the civil litigation
2 funding company agrees to provide non-recourse civil
3 litigation funding to the consumer in compliance with Article
4 2.

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

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

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

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

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

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

24 "Proceeds" means those funds available for payment to the
25 civil litigation funding company that are remaining from any
26 settlement, verdict, final judgment, insurance payment, or

1 award obtained in the consumer's legal claim after reductions
2 are made under Section 2-15 of this Act.

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

6 "Secretary" means the Illinois Secretary of Financial and
7 Professional Regulation.

8 Article 2. Non-Recourse Civil Litigation Funding

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

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

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

16 (B) an itemization of one-time fees;

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

24 (D) a calculation of the annual percentage fee for each

1 180-day interval.

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

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

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

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

18 The contract must also specify that in order for the
19 cancellation to be effective, the consumer must either return
20 to the civil litigation funding company the total amount of the
21 funding amount by (a) delivering the civil litigation funding
22 company's uncashed check to the civil litigation company's
23 offices in person within 10 business days after receipt of the
24 funding amount, (b) sending a notice of cancellation via
25 registered or certified mail and include in the mailing a
26 return of the total amount of funding amount in the form of the

1 civil litigation funding company's uncashed check within 10
2 business days after receipt of the funding amount, or (c)
3 sending a registered, certified or cashier's check or money
4 order, by insured, registered, or certified United States mail,
5 postmarked within 10 business days after receipt of the funding
6 amount, to the address specified in the contract for
7 cancellation.

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

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

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

1 time from the funding date through the resolution date.
2 [Insert name of the civil litigation funding company] is
3 not accepting an assignment of your legal claim.

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

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

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

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

20 "Do not sign this Agreement before you read it completely
21 or if it contains any blank spaces. You are entitled to a
22 completely filled-in copy of this Agreement. Before you
23 sign this Agreement you should obtain the advice of an
24 attorney. Depending on the circumstances, you may want to
25 consult a tax, public, or private benefit planning or
26 financial professional. You acknowledge that your attorney

1 in the legal claim has provided no tax, public, or private
2 benefit planning regarding this transaction. You further
3 understand and agree that the funds you receive from
4 [insert name of the civil litigation funding company] shall
5 not be used to pay for or applied to the payment of
6 attorney's fees or litigation costs related to your legal
7 claim.".

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

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

23 (8) The contracted return of the funding amount, plus any
24 agreed upon fees assigned to the civil litigation funding
25 company on the resolution date shall not be determined as a
26 percentage of the recovery from the legal claim but shall be

1 set as a contractually determined amount based upon intervals
2 of time from the funding date through the resolution date.

3 Section 2-10. Contracted fee amount. The total dollar
4 amount assigned by the consumer to the civil litigation funding
5 company shall be limited to the funding amount, plus the
6 following:

7 (1) if resolution date occurs any time from the funding
8 date to 10 business days after the funding date, the civil
9 litigation funding company may not collect a fee;

10 (2) if resolution date occurs any time from the 11th
11 business day after the funding date to 30 days after the
12 funding date, the civil litigation funding company may
13 collect a fee not exceeding 0.05 times the funding amount;

14 (3) if resolution date occurs any time from 31 days
15 after the funding date to 60 days after the funding date,
16 the civil litigation funding company may collect a fee not
17 exceeding 0.10 times the funding amount;

18 (4) if resolution date occurs any time from 61 days
19 after the funding date to 180 days after the funding date,
20 the civil litigation funding company may collect a fee not
21 exceeding 0.34 times the funding amount;

22 (5) if resolution date occurs any time from 181 days
23 after the funding date to 360 days after the funding date,
24 the civil litigation funding company may collect a fee not
25 exceeding 0.75 times the funding amount;

1 (6) if resolution date occurs any time from 361 days
2 after the funding date to 720 days after the funding date,
3 the civil litigation funding company may collect a fee not
4 exceeding 1.50 times the funding amount; or

5 (7) if resolution date occurs any time from 721 days
6 after the funding date to 1080 days after the funding date,
7 the civil litigation funding company may collect a fee not
8 exceeding 1.80 times the funding amount.

9 (8) No additional fees shall be applied for any period
10 of time beyond 1080 days after the funding date.

11 Except for the fees set forth in this Section and Section
12 2-12, the civil litigation funding company may not impose on a
13 consumer any additional finance charges, interest, fees, or
14 charges of any sort for any purpose.

15 Section 2-12. Charges permitted.

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

18 (b) A licensee may charge an expedited funds delivery
19 option charge not to exceed the actual cost of delivery or \$20,
20 whichever is less. Expedited funds delivery options,
21 including, but not limited to, overnight delivery, electronic
22 fund transfers, and Automated Clearing House (ACH)
23 transactions may be offered to the consumer as a choice of the
24 method of the delivery of funds. The fund delivery charge is
25 fully earned at the time that each funding transaction is made

1 and shall not be subject to refund. Details and receipts of
2 delivery shall be provided in an invoice to the consumer no
3 more than 10 business days after the funding date. A no-charge
4 delivery option must be offered to the consumer as a choice.

5 Section 2-15. Priorities. Subrogation claims and
6 litigation costs, health care providers, employers in worker's
7 compensation proceedings, health insurers, employers with
8 self-funded health care plans, Medicare, and Public Aid shall
9 be satisfied before and take priority over any claim of the
10 civil litigation funding company. All other holders of liens,
11 security interests, or subrogation claims shall take priority
12 over the civil litigation funding company to the extent allowed
13 by law.

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

16 (1) The civil litigation funding company shall not pay or
17 offer to pay any compensation to any attorney, law firm,
18 medical provider, chiropractor, physical therapist, or any of
19 their employees for referring a consumer to the civil
20 litigation funding company. The civil litigation funding
21 company agrees not to accept any compensation from any
22 attorney, law firm, medical provider, chiropractor, physical
23 therapist, or any of their employees, other than the funding
24 amount and any agreed upon fees the consumer assigned to the

1 civil litigation funding company out of the potential proceeds
2 of the legal claim. Neither the funding company nor any of its
3 affiliates may provide any funding to a lawyer or law firm who
4 represents a consumer with an outstanding loan to any of the
5 lawyer's or law firm's clients.

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

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

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

22 (5) For non-English speaking consumers, the principal
23 terms of the contract must be translated in writing into the
24 consumer's primary language. The consumer must sign the
25 translated document containing the principal terms and initial
26 each page and the translator must sign an affirmation

1 confirming that the principal terms have been presented to the
2 consumer in the consumer's primary language and acknowledged by
3 the consumer. Principal terms shall include all items that must
4 be disclosed by Section 2-5.

5 (6) The civil litigation funding company shall not
6 knowingly enter into a non-recourse civil litigation funding
7 contract with a consumer where the consumer's legal claim is a
8 pending class action lawsuit at the time of the funding. The
9 civil litigation funding company may not discuss a consumer's
10 choice to join a class action lawsuit other than to confirm
11 that a consumer has or has not chosen to join a class action
12 lawsuit. Should any legal claim in which a plaintiff has
13 received non-recourse civil litigation funding become a class
14 action matter, no further funding shall be permitted.

15 (7) An attorney or law firm shall not have a financial
16 interest in the civil litigation funding company providing
17 non-recourse civil litigation funding to a consumer
18 represented by that attorney or law firm.

19 (8) No communication between a consumer's attorney and a
20 civil litigation funding company pertaining to a consumer's
21 non-recourse civil litigation funding transaction shall limit,
22 waive, or abrogate any statutory or common-law privilege,
23 including the attorney-client privilege or the work-product
24 doctrine.

25 (9) The return of the funding amount to the civil
26 litigation funding company, plus any agreed upon fees, shall be

1 rendered only out of the proceeds, if any, of the realized
2 settlement, judgment, award, or verdict the consumer may
3 receive from the legal claim. Under no circumstances shall the
4 civil litigation funding company have recourse for the funding
5 amount beyond the consumer's proceeds from the legal claim.

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

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

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

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

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

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

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

23 Section 2-25. Information; reporting and examination.

24 (a) A licensee shall keep and use books, accounts, and
25 records that will enable the Secretary to determine if the

1 licensee is complying with the provisions of this Act and
2 maintain any other records as required by the Secretary.

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

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

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

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

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

17 (5) the total number of non-recourse civil litigation
18 funding transactions in which the civil litigation funding
19 company received the return of the funding amount, plus any
20 agreed upon fees; the total number of non-recourse civil
21 litigation funding transactions for which the civil
22 litigation funding company received no return of the
23 funding amount or any fees; and the total number of
24 non-recourse civil litigation funding transactions in
25 which the civil litigation funding company received an
26 amount less than the contracted amount.

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

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

20 Section 2-30. Applicability.

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

25 (b) Nothing in this Act shall cause any non-recourse civil

1 litigation funding transaction conforming to this Act to be
2 deemed to be a "loan or investment contract" or subject to the
3 restrictions or provisions governing loans or investment
4 contracts set forth in the Interest Act, the Consumer
5 Installment Loan Act, or other provisions of Illinois law.

6 Article 3. Licensure.

7 Section 3-1. Licensure requirement.

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

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

22 Section 3-5. Licensure.

23 (a) An application for a license shall be in writing and in

1 a form prescribed by the Secretary. Applicants must also submit
2 a non-refundable application fee of \$1,500, due at the time of
3 the application. The Secretary may not issue a non-recourse
4 civil litigation funding license unless and until the following
5 findings are made:

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

12 (2) that the applicant has submitted such other
13 information as the Secretary may deem necessary.

14 (b) A license shall be issued for no longer than one year
15 and no renewal of a license may be provided if a licensee has
16 substantially violated this Act and has not cured the violation
17 to the satisfaction of the Department.

18 (c) A licensee shall appoint, in writing, the Secretary as
19 attorney-in-fact upon whom all lawful process against the
20 licensee may be served with the same legal force and validity
21 as if served on the licensee. A copy of the written
22 appointment, duly certified, shall be filed in the office of
23 the Secretary, and a copy thereof certified by the Secretary
24 shall be sufficient evidence to subject a licensee to
25 jurisdiction in a court of law. This appointment shall remain
26 in effect while any liability remains outstanding in this State

1 against the licensee. When summons is served upon the Secretary
2 as attorney-in-fact for a licensee, the Secretary shall
3 immediately notify the licensee by registered mail, enclosing
4 the summons and specifying the day of service.

5 (d) A licensee must pay an annual fee of \$1,000. In
6 addition to the annual license fee, the reasonable expense of
7 any examination or hearing by the Secretary under any
8 provisions of this Act shall be borne by the licensee. If a
9 licensee fails to submit an application for renewal by December
10 31st of the then current year, its license shall automatically
11 expire; however, the Secretary, in his or her discretion, may
12 reinstate an expired license upon:

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

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

16 (e) No licensee shall conduct the business of providing
17 non-recourse civil litigation funding under this Act within any
18 office, suite, room, or place of business in which any consumer
19 lending business to consumers residing and domiciled in
20 Illinois and is solicited or engaged in within the State of
21 Illinois unless the other business is licensed by the
22 Department or, in the opinion of the Secretary, operating the
23 other business would not be contrary to the best interests of
24 consumers and is authorized by the Secretary in writing.

25 (f) The Secretary shall maintain a list of licensees that
26 shall be available to interested consumers and lenders and the

1 public. The Secretary shall maintain a toll-free number whereby
2 consumers may obtain information about licensees. The
3 Secretary shall also establish a complaint process under which
4 an aggrieved consumer may file a complaint against a licensee
5 or non-licensee who violates any provision of this Act.

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

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

11 (2) With the exception of filing for bankruptcy, surrender
12 its license to the Secretary for cancellation. The surrender of
13 the license shall not affect the licensee's civil or criminal
14 liability for acts committed before or after the surrender or
15 entitle the licensee to a return of any part of the annual
16 license fee.

17 (3) Notify the Department of the location where the books,
18 accounts, contracts, and records will be maintained.

19 The accounts, books, records, and contracts shall be
20 maintained and serviced by the licensee, by another licensee
21 under this Act, or by the Department.

22 Article 4. Administrative Provisions

23 Section 4-5. Prohibited acts. A licensee or unlicensed

1 person or entity entering into non-recourse civil litigation
2 funding may not commit, or have committed, on behalf of the
3 licensee or unlicensed person or entity, any of the following
4 acts:

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

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

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

13 (4) Threatening to take any action against a consumer that
14 is prohibited by this Act or making any misleading or deceptive
15 statements regarding the non-recourse civil litigation
16 funding.

17 (5) Making a misrepresentation of a material fact by an
18 applicant for licensure in obtaining or attempting to obtain a
19 license.

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

22 (A) a confession of judgment clause;

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

26 (C) a provision that the consumer agrees not to assert

1 any claim or defense arising out of the contract.

2 (7) Taking any power of attorney.

3 Section 4-10. Enforcement and remedies.

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

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

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

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

21 (e) The Secretary may issue a cease and desist order to any
22 licensee or other person doing business without the required
23 license, when in the opinion of the Secretary the licensee or
24 other person is violating or is about to violate any provisions
25 of this Act or any rule or requirement imposed in writing by

1 the Department as a condition of granting any authorization
2 permitted by this Act. In addition to any other action
3 authorized by this Act, if the Secretary determines that a
4 civil litigation funding company is engaged in or is believed
5 to be engaged in activities that may constitute a violation of
6 this Act and the Secretary is able to show that an emergency
7 exists, the Secretary may suspend the civil litigation funding
8 company's license for a period not exceeding 180 calendar days.
9 The cease and desist order and emergency suspension permitted
10 by this subsection (e) may be issued prior to a hearing.

11 The Secretary shall serve notice of his or her action,
12 including, but not limited to, a statement of the reasons for
13 the action, either personally or by certified mail, return
14 receipt requested. Service by certified mail shall be deemed
15 completed when the notice is deposited in the U.S. Mail.

16 Within 10 business days after service of the cease and
17 desist order, the licensee or other person may request a
18 hearing in writing. The Secretary shall schedule a hearing
19 within 30 days after the request for a hearing unless otherwise
20 agreed to by the parties. The Secretary shall have the
21 authority to adopt rules for the administration of this
22 Section.

23 If it is determined that the Secretary had the authority to
24 issue the cease and desist order, he or she may issue such
25 orders as may be reasonably necessary to correct, eliminate, or
26 remedy the conduct.

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

8 (f) The Secretary may, after 10 business days notice by
9 registered mail to the licensee at the address set forth in the
10 license stating the contemplated action an in general the
11 grounds therefore, fine the licensee an amount not exceeding
12 \$10,000 per violation, or revoke or suspend any license issued
13 by the Department if found that:

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

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

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

26 The Secretary may issue a new license to a licensee

1 whose license has been revoked when facts or conditions
2 that clearly would have warranted the Secretary in refusing
3 originally to issue the license no longer exist.

4 In every case in which a license or renewal of a
5 license is denied, the Secretary shall serve the licensee
6 with notice of his or her action, including a statement of
7 the reasons for his or her actions, either personally, or
8 by certified mail, return receipt requested. Service by
9 certified mail shall be deemed completed when the notice is
10 deposited in the U.S. Mail.

11 An order assessing a fine, an order revoking or
12 suspending a license, or an order denying or refusing to
13 renew a license shall take effect upon service of the order
14 unless the licensee requests a hearing, in writing, within
15 10 days after the date of service. In the event a hearing
16 is requested, the order shall be stayed until final
17 administrative order is entered.

18 If the licensee requests a hearing, the Secretary shall
19 schedule a hearing within 30 days after the request for a
20 hearing unless otherwise agreed to by the parties.

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

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

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

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

7 Section 4-15. Bonding.

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

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

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

23 Section 4-20. Reporting of violations. The Department
24 shall report to the Attorney General all material violations of

1 this Act of which it becomes aware.

2 Section 4-25. Rulemaking.

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

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

13 Section 4-28. Confidentiality. All information collected
14 by the Department under an examination or investigation of a
15 civil litigation funding company, including, but not limited
16 to, information collected to investigate any complaint against
17 a civil litigation funding company filed with the Department,
18 shall be maintained for the confidential use of the Department
19 and shall not be disclosed. The Department may not disclose
20 such information to anyone other than the licensee, law
21 enforcement officials, or other regulatory agencies that have
22 an appropriate regulatory interest as determined by the
23 Secretary, or to a party presenting a lawful subpoena to the
24 Department. Information and documents disclosed to a federal,

1 State, county, or local law enforcement agency shall not be
2 disclosed by the agency for any purpose to any other agency or
3 person. An order issued by the Department against a civil
4 litigation funding company shall be a public record and any
5 documents produced in discovery, filed with the administrative
6 law judge, or introduced at hearing shall be a public record,
7 except as otherwise prohibited by law.

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

12 Section 4-35. Waivers. There shall be no waiver of any
13 provision of this Act.

14 Section 4-40. Superiority of Act. To the extent this Act
15 conflicts with any other State laws, this Act is superior and
16 supersedes those laws for the purposes of regulating
17 non-recourse civil litigation funding in Illinois.

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

20 Section 4-48. Consumer protection study. The Department
21 shall conduct a study to be reported to the Governor and the

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

12 Article 90. Amendatory Provisions

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

15 (5 ILCS 80/4.25)

16 Sec. 4.25. Acts Act repealed on January 1, 2015 and May 31,
17 2015.

18 (a) The following Act is repealed on January 1, 2015:

19 The Genetic Counselor Licensing Act.

20 (b) The following Act is repealed on May 31, 2015:

21 The Non-Recourse Civil Litigation Funding Act.

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

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

3 (205 ILCS 670/21) (from Ch. 17, par. 5427)

4 Sec. 21. Application of Act. This Act does not apply to any
5 person, partnership, association, limited liability company,
6 or corporation doing business under and as permitted by any law
7 of this State or of the United States relating to banks,
8 savings and loan associations, savings banks, credit unions, or
9 licensees under the Residential Mortgage License Act for
10 residential mortgage loans made pursuant to that Act. This Act
11 does not apply to business loans. This Act does not apply to
12 payday loans. This Act does not apply to non-recourse civil
13 litigation funding.

14 (Source: P.A. 94-13, eff. 12-6-05.)

15 Section 90-10. The Consumer Fraud and Deceptive Business
16 Practices Act is amended by changing Section 2Z as follows:

17 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

18 Sec. 2Z. Violations of other Acts. Any person who knowingly
19 violates the Automotive Repair Act, the Automotive Collision
20 Repair Act, the Home Repair and Remodeling Act, the Dance
21 Studio Act, the Physical Fitness Services Act, the Hearing
22 Instrument Consumer Protection Act, the Illinois Union Label
23 Act, the Job Referral and Job Listing Services Consumer

1 Protection Act, the Travel Promotion Consumer Protection Act,
2 the Credit Services Organizations Act, the Automatic Telephone
3 Dialers Act, the Pay-Per-Call Services Consumer Protection
4 Act, the Telephone Solicitations Act, the Illinois Funeral or
5 Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care
6 Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales
7 Act, the High Risk Home Loan Act, the Payday Loan Reform Act,
8 the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section
9 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section
10 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the
11 Internet Caller Identification Act, paragraph (6) of
12 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
13 Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150,
14 or 18d-153 of the Illinois Vehicle Code, Article 3 of the
15 Residential Real Property Disclosure Act, the Automatic
16 Contract Renewal Act, the Non-Recourse Civil Litigation
17 Funding Act, or the Personal Information Protection Act commits
18 an unlawful practice within the meaning of this Act.

19 (Source: P.A. 95-413, eff. 1-1-08; 95-562, eff. 7-1-08; 95-876,
20 eff. 8-21-08; 96-863, eff. 1-19-10; 96-1369, eff. 1-1-11;
21 96-1376, eff. 7-29-10; revised 9-2-10.)

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