



Rep. André M. Thapedi

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1 AMENDMENT TO HOUSE BILL 531

2 AMENDMENT NO. _____. Amend House Bill 531 by replacing
3 everything after the enacting clause with the following:

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

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

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

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

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

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

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

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

13 "Funding date" means the date on which the funding amount
14 is paid to the consumer by the non-recourse consumer litigation
15 funding company.

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

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

19 "Non-recourse consumer litigation funding" means a
20 transaction of any amount in which a non-recourse consumer
21 litigation funding company purchases and a consumer assigns to
22 the non-recourse consumer litigation funding company the
23 contingent right to receive a portion of the potential proceeds
24 of a settlement, judgment, award, or verdict obtained in the
25 consumer's legal claim. "Non-recourse consumer litigation
26 funding" does not include entities that engage in a commercial

1 to commercial business transaction.

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

7 "Resolution date" means the date the funding amount plus
8 the agreed upon fees from the legal claim are received by the
9 non-recourse consumer litigation funding company.

10 "Secretary" means the Illinois Secretary of Financial and
11 Professional Regulation.

12 Article 2. Non-Recourse Consumer Litigation Funding

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

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

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

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

21 (C) the total dollar amount owed by the consumer to the
22 non-recourse consumer litigation funding company, set
23 forth up to 1,080 days beginning at the 11th business day
24 after the funding date, then at 180 days after the funding

1 date and at every 180 days thereafter; the total dollar
2 amount shall be calculated using the identical methodology
3 used by the non-recourse consumer litigation funding
4 company to calculate the contracted fee amount under
5 Section 2-10.

6 The Secretary shall prescribe by rule the format of the
7 chart that clearly discloses to the consumer all the
8 information in this subsection. Until the Secretary makes such
9 a rule, each non-recourse consumer litigation funding company
10 must have a chart format approved for distribution by the
11 Secretary.

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

15 (2) The contract shall provide that the consumer may cancel
16 the contract within 7 business days following the consumer's
17 receipt of the funding amount, without penalty or further
18 obligation. The contract shall contain the following notice
19 written in at least 12-point, bold face type:

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

23 The contract must also specify that in order for the
24 cancellation to be effective, the consumer must either return
25 to the non-recourse consumer litigation funding company the
26 total amount of the funding amount by (a) delivering the

1 non-recourse consumer litigation funding company's uncashed
2 check to the non-recourse consumer litigation company's
3 offices in person within 10 business days after receipt of the
4 funding amount, (b) sending a notice of cancellation via
5 registered or certified mail and include in the mailing a
6 return of the total amount of funding amount in the form of the
7 non-recourse consumer litigation funding company's uncashed
8 check within 10 business days after receipt of the funding
9 amount, or (c) sending a registered, certified or cashier's
10 check or money order, by insured, registered, or certified
11 United States mail, postmarked within 10 business days after
12 receipt of the funding amount, to the address specified in the
13 contract for cancellation.

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

16 "(A) [Insert name of the non-recourse consumer
17 litigation funding company] agrees that it shall have no
18 right to and will not make any decisions with respect to
19 the conduct of the legal claim or any settlement or
20 resolution thereof and that the right to make those
21 decisions remains solely with you and your attorney in the
22 legal claim. [Insert name of the non-recourse consumer
23 litigation funding company] further agrees that it shall
24 have no right to pursue the legal claim on your behalf.

25 (B) [Insert name of the non-recourse consumer
26 litigation funding company] agrees that it shall only

1 accept: (i) an assignment of a contingent right to receive
2 a portion of the potential proceeds; (ii) the contracted
3 return of the funding amount; and (iii) any agreed upon
4 fees. Any agreed upon fees to [insert name of the
5 non-recourse consumer litigation funding company] shall
6 not be determined as a percentage of your recovery from the
7 legal claim but shall be set as a contractually determined
8 amount based upon intervals of time from the funding date
9 through the resolution date. [Insert name of the
10 non-recourse consumer litigation funding company] is not
11 accepting an assignment of your legal claim.

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

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

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

25 "THE FUNDING AMOUNT AND AGREED UPON FEES SHALL ONLY BE PAID
26 FROM THE PROCEEDS OF YOUR LEGAL CLAIM AND SHALL ONLY BE

1 PAID TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM
2 YOUR LEGAL CLAIM. YOU WILL NOT OWE [INSERT NAME OF THE
3 NON-RECOURSE CONSUMER LITIGATION FUNDING COMPANY] ANYTHING
4 IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM.".

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

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

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

25 (7) The non-recourse consumer litigation funding company
26 shall provide the consumer's attorney with a written

1 notification of the non-recourse consumer litigation funding
2 provided to the consumer 3 business days before the funding
3 date by way of postal mail, courier service, facsimile, e-mail
4 return receipt acknowledged, or other means of proof of
5 delivery method unless there is a written acknowledgment by the
6 attorney representing the consumer in the legal claim as to the
7 terms of the contract.

8 (8) The contracted return of the funding amount, plus any
9 agreed upon fees assigned to the non-recourse consumer
10 litigation funding company on the resolution date shall not be
11 determined as a percentage of the recovery from the legal claim
12 but shall be set as a contractually determined amount based
13 upon intervals of time from the funding date through the
14 resolution date.

15 Section 2-10. Contracted fee amount.

16 (a) The non-recourse consumer litigation funding company
17 shall offer the consumer the option of either entering into a
18 conventional loan under the Consumer Installment Loan Act or
19 entering into non-recourse consumer litigation funding.

20 If the consumer elects to enter into a conventional loan
21 agreement under the Consumer Installment Loan Act, the interest
22 charged shall not exceed an annual percentage rate of 36%.

23 If the consumer elects to enter into non-recourse consumer
24 litigation funding, the company shall not charge a fee in
25 excess of 36% annual percentage rate plus a deferment fee not

1 to exceed 3% for each month the funding is outstanding with
2 compounding to occur no more often than quarterly.

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

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

10 (d) Under no circumstances shall the total amount of
11 finance charges, interest, fees, or any other charges, when
12 taken together, exceed the award to the consumer.

13 Section 2-12. Charges permitted.

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

16 (b) A licensee may charge an expedited funds delivery
17 option charge not to exceed the actual cost of delivery or \$20,
18 whichever is less. Expedited funds delivery options,
19 including, but not limited to, overnight delivery, electronic
20 fund transfers, and Automated Clearing House (ACH)
21 transactions may be offered to the consumer as a choice of the
22 method of the delivery of funds. The fund delivery charge is
23 fully earned at the time that each funding transaction is made
24 and shall not be subject to refund. Details and receipts of
25 delivery shall be provided in an invoice to the consumer no

1 more than 10 business days after the funding date. A no-charge
2 delivery option must be offered to the consumer as a choice.

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

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

17 (1) The non-recourse consumer litigation funding company
18 shall not pay or offer to pay any compensation to any attorney,
19 law firm, medical provider, chiropractor, physical therapist,
20 or any of their employees for referring a consumer to the
21 non-recourse consumer litigation funding company. The
22 non-recourse consumer litigation funding company agrees not to
23 accept any compensation from any attorney, law firm, medical
24 provider, chiropractor, physical therapist, or any of their

1 employees, other than the funding amount and any agreed upon
2 fees the consumer assigned to the non-recourse consumer
3 litigation funding company out of the potential proceeds of the
4 legal claim. If a lawyer or law firm represents one or more
5 consumers with outstanding non-recourse consumer litigation
6 fundings from the same non-recourse consumer litigation
7 funding company, that non-recourse consumer litigation funding
8 company may not provide any type of funding to the lawyer or
9 law firm.

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

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

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

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

10 (6) No communication between a consumer's attorney and a
11 non-recourse consumer litigation funding company pertaining to
12 a consumer's non-recourse consumer litigation funding
13 transaction shall limit, waive, or abrogate any statutory or
14 common-law privilege, including the attorney-client privilege
15 or the work-product doctrine.

16 (7) The return of the funding amount to the non-recourse
17 consumer litigation funding company, plus any agreed upon fees,
18 shall be rendered only out of the funds, if any, of the
19 realized settlement, judgment, award, or verdict the consumer
20 may receive from the legal claim. Under no circumstances shall
21 the non-recourse consumer litigation funding company have
22 recourse for the funding amount beyond the consumer's proceeds
23 from the legal claim.

24 (8) The non-recourse consumer litigation funding company
25 shall have no authority to advise the consumer on any legal
26 matters or to make any decisions with respect to the conduct of

1 the litigation of the legal claim or any settlement or
2 resolution thereof. The right to make those decisions remains
3 solely with the consumer and the consumer's attorney
4 representing the consumer in the legal claim. The non-recourse
5 consumer litigation funding company shall have no right to
6 pursue the legal claim on the consumer's behalf.

7 (9) The non-recourse consumer litigation funding company
8 shall only accept an assignment of a contingent right to
9 receive a portion of the potential proceeds, rather than an
10 assignment of the legal claim. The contracted return of the
11 funding amount, plus any agreed upon fees assigned to the
12 non-recourse consumer litigation funding company, shall not be
13 determined as a percentage of the total recovery from the legal
14 claim, but shall be set as a contractually determined amount
15 based upon intervals of time from the funding date through the
16 resolution date.

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

21 (11) Contact between the non-recourse consumer litigation
22 funding company and the consumer shall be subject to the
23 following limitations:

24 (A) Neither a non-recourse consumer litigation funding
25 company, nor any person acting on behalf of a non-recourse
26 consumer litigation funding company, shall contact a

1 consumer prior to the consumer obtaining legal
2 representation and initiating a legal claim.

3 (B) Neither a non-recourse consumer litigation funding
4 company, nor any person acting on behalf of a non-recourse
5 consumer litigation funding company, shall contact the
6 consumer after the funding date in order to influence any
7 decisions with respect to the conduct of the legal claim or
8 any settlement or resolution thereof. Notwithstanding the
9 foregoing, the non-recourse consumer litigation funding
10 company may contact the consumer to obtain the status of
11 the legal claim and updated attorney contact information.

12 (C) After the resolution date, neither a non-recourse
13 consumer litigation funding company, nor any person acting
14 on behalf of a non-recourse consumer litigation funding
15 company, shall seek to collect additional funds or threaten
16 civil action for any deficiency.

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

18 (a) A licensee shall keep and use books, accounts, and
19 records that will enable the Secretary to determine if the
20 licensee is complying with the provisions of this Act and
21 maintain any other records as required by the Secretary.

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

25 (1) the total number of non-recourse consumer

1 litigation fundings made during the previous calendar
2 year;

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

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

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

12 (5) the total number of non-recourse consumer
13 litigation funding transactions in which the non-recourse
14 consumer litigation funding company received the return of
15 the funding amount, plus any agreed upon fees; the total
16 number of non-recourse consumer litigation funding
17 transactions for which the non-recourse consumer
18 litigation funding company received no return of the
19 funding amount or any fees; and the total number of
20 non-recourse consumer litigation funding transactions in
21 which the non-recourse consumer litigation funding company
22 received an amount less than the contracted amount.

23 The report shall be verified by the oath or affirmation of
24 the Chief Executive Officer, Chief Financial Officer, or other
25 duly authorized representative of the licensee. The report must
26 be filed with the Secretary no later than March 1 of the year

1 following the year for which the report discloses the
2 information specified in this subsection (b). The Secretary may
3 impose a fine of \$50 per day upon the licensee for each day
4 beyond the filing deadline that the report is not filed.

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

16 Section 2-30. Applicability.

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

21 (b) Nothing in this Act shall cause any non-recourse civil
22 litigation funding transaction conforming to this Act to be
23 deemed to be a loan or investment contract or subject to the
24 restrictions or provisions governing loans or investment
25 contracts set forth in the Interest Act, the Consumer

1 Installment Loan Act, or any other provisions of State law.

2 Article 3. Licensure.

3 Section 3-1. Licensure requirement.

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

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

19 Section 3-5. Licensure.

20 (a) An application for a license shall be in writing and in
21 a form prescribed by the Secretary. Applicants must also submit
22 a non-refundable application fee of \$2,500, due at the time of
23 the application. The Secretary may not issue a non-recourse

1 consumer litigation funding license unless and until the
2 following findings are made:

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

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

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

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

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

1 immediately notify the licensee by registered mail, enclosing
2 the summons and specifying the day of service.

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

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

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

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

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

24 (f) The Secretary shall maintain a list of licensees that
25 shall be available to interested consumers and lenders and the
26 public. The Secretary shall maintain a toll-free number whereby

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

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

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

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

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

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

21 Article 4. Administrative Provisions

22 Section 4-5. Prohibited acts. A licensee or unlicensed
23 person or entity entering into non-recourse consumer

1 litigation funding may not commit, or have committed, on behalf
2 of the licensee or unlicensed person or entity, any of the
3 following acts:

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

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

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

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

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

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

21 (A) a confession of judgment clause;

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

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

1 (7) Taking any power of attorney.

2 Section 4-10. Enforcement and remedies.

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

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

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

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

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

1 permitted by this Act. In addition to any other action
2 authorized by this Act, if the Secretary determines that a
3 non-recourse consumer litigation funding company is engaged in
4 or is believed to be engaged in activities that may constitute
5 a violation of this Act and the Secretary is able to show that
6 an emergency exists, the Secretary may suspend the non-recourse
7 consumer litigation funding company's license for a period not
8 exceeding 180 calendar days. The cease and desist order and
9 emergency suspension permitted by this subsection (e) may be
10 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 non-recourse consumer
25 litigation funding company and a 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 consumer
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 non-recourse consumer litigation funding company, including,
16 but not limited to, information collected to investigate any
17 complaint against a non-recourse consumer litigation funding
18 company filed with the Department, shall be maintained for the
19 confidential use of the Department and shall not be disclosed.
20 The Department may not disclose such information to anyone
21 other than the licensee, law enforcement officials, or other
22 regulatory agencies that have an appropriate regulatory
23 interest as determined by the Secretary, or to a party
24 presenting a lawful subpoena to the Department. Information and

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

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

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

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

17 Section 4-48. Consumer protection study. The Department
18 shall conduct a study to be reported to the Governor and the
19 leaders of the General Assembly no later than February 1, 2018,
20 addressing the adequacy of the consumer protections contained
21 in this Act. The study shall include, but not be limited to:
22 (1) an analysis of the average percentage of a consumer's

1 settlement that is used to return the funding amount in each
2 transaction; (2) a survey of consumer complaints filed against
3 non-recourse consumer litigation funding companies; (3) a
4 description of the benefits and shortcomings of non-recourse
5 consumer litigation funding to consumers; and (4) any reforms
6 that the Secretary recommends to better regulate non-recourse
7 consumer litigation funding companies.

8 Article 90. Amendatory Provisions

9 Section 90-1. The Regulatory Sunset Act is amended by
10 changing Section 4.29 as follows:

11 (5 ILCS 80/4.29)

12 Sec. 4.29. Acts repealed in 2019 ~~on January 1, 2019 and~~
13 ~~December 31, 2019.~~

14 (a) The following Act is repealed on January 1, 2019:

15 The Environmental Health Practitioner Licensing Act.

16 (b) The following Act is repealed on May 31, 2019:

17 The Non-Recourse Consumer Litigation Funding Act.

18 (c) ~~(b)~~ The following Act is repealed on December 31, 2019:

19 The Structural Pest Control Act.

20 (Source: P.A. 95-1020, eff. 12-29-08; 96-473, eff. 8-14-09.)

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

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

2 Sec. 2Z. Violations of other Acts. Any person who knowingly
3 violates the Automotive Repair Act, the Automotive Collision
4 Repair Act, the Home Repair and Remodeling Act, the Dance
5 Studio Act, the Physical Fitness Services Act, the Hearing
6 Instrument Consumer Protection Act, the Illinois Union Label
7 Act, the Job Referral and Job Listing Services Consumer
8 Protection Act, the Travel Promotion Consumer Protection Act,
9 the Credit Services Organizations Act, the Automatic Telephone
10 Dialers Act, the Pay-Per-Call Services Consumer Protection
11 Act, the Telephone Solicitations Act, the Illinois Funeral or
12 Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care
13 Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales
14 Act, the High Risk Home Loan Act, the Payday Loan Reform Act,
15 the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section
16 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section
17 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the
18 Internet Caller Identification Act, paragraph (6) of
19 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
20 Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150,
21 or 18d-153 of the Illinois Vehicle Code, Article 3 of the
22 Residential Real Property Disclosure Act, the Automatic
23 Contract Renewal Act, the Non-Recourse Consumer Litigation
24 Funding Act, or the Personal Information Protection Act commits
25 an unlawful practice within the meaning of this Act.

1 (Source: P.A. 96-863, eff. 1-19-10; 96-1369, eff. 1-1-11;
2 96-1376, eff. 7-29-10; 97-333, eff. 8-12-11.)

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