



Rep. André M. Thapedi

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LRB098 08543 MGM 41589 a

1 AMENDMENT TO HOUSE BILL 2301

2 AMENDMENT NO. _____. Amend House Bill 2301 by replacing
3 everything after the enacting clause with the following:

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

6 Section 5. Definitions. In this Act:

7 "Civil litigation funding company" means a person or entity
8 that enters into a non-recourse civil litigation funding
9 transaction with a consumer.

10 "Consumer" means a person residing or domiciled in Illinois
11 or who elects to enter into a transaction under this Act,
12 whether it be in-person, over the Internet, by facsimile, or by
13 any other electronic means, and who has a pending legal claim
14 and is represented by an attorney at the time he or she
15 receives the non-recourse civil litigation funding.

16 "Department" means the Department of Financial and

1 Professional Regulation.

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

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

9 Section 10. Contract provisions.

10 (a) All contracts for non-recourse civil litigation
11 funding shall comply with the following requirements:

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

15 (A) the total dollar amount of funds to be paid to
16 the consumer;

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

18 (C) the total dollar amount being assigned by the
19 consumer to the civil litigation funding company, set
20 forth in 6-month intervals for 36 months, including all
21 fees;

22 (D) the total dollar amount in broker fees that are
23 involved in the transaction; and

24 (E) the annual percentage rate of return,
25 calculated as of the last day of each 6-month interval,

1 including frequency of compounding.

2 (2) The contract shall provide that the consumer may
3 cancel the contract within 5 business days following the
4 consumer's receipt of funds, without penalty or further
5 obligation. The contract shall contain the following
6 notice written in at least 12-point, bold face type:

7 "Consumer's right to cancellation: You may cancel this
8 contract without penalty or further obligation within 5
9 business days after the date you receive funds from (insert
10 name of civil litigation funding company).".

11 The contract also shall specify that in order for the
12 cancellation to be effective, the consumer shall either
13 return to the civil litigation funding company the full
14 amount of disbursed funds by delivering the civil
15 litigation funding company's uncashed check to the civil
16 litigation company's offices in person within 5 business
17 days after the disbursement of the funds or mail a notice
18 of cancellation and include in that mailing a return of the
19 full amount of disbursed funds in the form of the civil
20 litigation funding company's uncashed check, or a
21 registered or certified check or money order, by insured,
22 registered, or certified United States mail, postmarked
23 within 5 business days after the receipt of those funds
24 from the civil litigation funding company, at the address
25 specified in the contract for cancellation.

26 (3) The contract shall contain the following statement

1 in at least 12-point bold face type:

2 "The civil litigation funding company agrees that
3 it shall have no right to and will not make any
4 decisions with respect to the conduct of the underlying
5 legal claim or any settlement or resolution thereof and
6 that the right to make those decisions remains solely
7 with you and your attorney in the legal claim."

8 (4) The contract for non-recourse civil litigation
9 funding shall contain an acknowledgement by the consumer
10 that he or she has reviewed the contract in its entirety.

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

14 "Do not sign this Agreement before you read it
15 completely or if it contains any blank spaces. You are
16 entitled to a completely filled-in copy of this contract.
17 Before you sign this Agreement you should obtain the advice
18 of an attorney. Depending on the circumstances, you may
19 want to consult a tax, public, or private benefit planning
20 or financial professional. You acknowledge that your
21 attorney in the legal claim has provided no tax, public, or
22 private benefit planning regarding this transaction."

23 (6) The contract shall contain a written
24 acknowledgment by the attorney representing the consumer
25 in the legal claim that states all of the following:

26 (A) the attorney representing the consumer in the

1 legal claim has reviewed the contract and all costs and
2 fees have been disclosed, including the annualized
3 rate of return applied to calculate the amount to be
4 paid by the consumer;

5 (B) the attorney representing the consumer in the
6 legal claim is being paid on a contingency basis, per a
7 written fee agreement;

8 (C) all proceeds of the civil litigation will be
9 disbursed via the trust account of the attorney
10 representing the consumer in the legal claim or a
11 settlement fund established to receive the proceeds of
12 the civil litigation from the defendant on behalf of
13 the consumer;

14 (D) the attorney representing the consumer in the
15 legal claim is following the written instructions of
16 the consumer with regard to the non-recourse civil
17 litigation funding;

18 (E) the attorney representing the consumer in the
19 legal claim shall not be paid or offered to be paid
20 commissions or referral fees; and

21 (F) whether the attorney representing the consumer
22 in the legal claim does or does not have a financial
23 interest in the civil litigation funding company.

24 (7) All contracts to the consumer must contain the
25 following statement, in plain language in a box with
26 15-point, bold face type, in all capitalized letters:

1 "IF THERE IS NO RECOVERY OF PROCEEDS FROM YOUR LEGAL
2 CLAIM, OR IF THERE IS NOT ENOUGH MONEY TO PAY THE CIVIL
3 LITIGATION FUNDING COMPANY IN FULL, YOU WILL NOT OWE THE
4 CIVIL LITIGATION FUNDING COMPANY ANYTHING IN EXCESS OF YOUR
5 RECOVERY, UNLESS YOU VIOLATED THIS PURCHASE AGREEMENT.".

6 (b) If a dispute arises between the consumer and the civil
7 litigation funding company concerning the contract for
8 non-recourse civil litigation funding, the responsibilities of
9 the attorney representing the consumer in the legal claim shall
10 be no greater than the attorney's responsibilities under the
11 Illinois Rules of Professional Conduct.

12 Section 15. Contract fee amount.

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

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

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

25 (b) No additional fees shall be applied for any period of

1 time beyond 1080 days from the funding date.

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

6 Section 20. Charges permitted.

7 (a) A licensee may charge an acquisition charge not to
8 exceed 8% of the amount funded or \$135, whichever is less.

9 (b) A licensee may charge an expedited funds delivery
10 option charge not to exceed the actual cost of delivery or \$20,
11 whichever is less, plus a \$25 handling fee. Expedited funds
12 delivery options, including, but not limited to, overnight
13 delivery, electronic fund transfers, and automated clearing
14 house transactions may be offered to the consumer as a choice
15 of the method of the delivery of funds. The fund delivery
16 charge is fully earned at the time that each funding
17 transaction is made and shall not be subject to refund. An
18 invoice containing details of expedited delivery charges and
19 dates of delivery shall be provided to the consumer or
20 consumer's attorney by way of postal mail, courier service,
21 facsimile, or e-mail, return receipt acknowledged, no more than
22 10 business days after the funding date. A no-charge delivery
23 option must be offered to the consumer as a choice.

24 Section 25. Claim priority. Any lien arising out of the

1 underlying consumer's legal claim for subrogation claims and
2 litigation costs, health care providers, employers in worker's
3 compensation proceedings, health insurers, employers with
4 self-funded health care plans, Medicare, and Public Aid shall
5 be satisfied before and take priority over any claim of the
6 civil litigation funding company. All other holders of liens,
7 security interests, or subrogation claims shall take priority
8 over the civil litigation funding company to the extent allowed
9 by law.

10 Section 30. Standards and practices.

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

15 (b) For non-English speaking consumers, the principal
16 terms of the contract shall be translated in writing into the
17 same language in which the oral negotiations were conducted
18 between the civil litigation funding company and the consumer.
19 The consumer must sign the translated document containing the
20 principal terms and initial each page, and any translator of
21 the consumer's choice must sign an affirmation confirming that
22 the principal terms have been presented to the consumer in the
23 same language in which the oral negotiations were conducted
24 between the civil litigation funding company and the consumer
25 and acknowledged by the consumer. Principal terms shall include

1 all items that must be disclosed under Section 10.

2 (c) The civil litigation funding company shall not
3 knowingly enter into a non-recourse civil litigation funding
4 contract with a consumer where the consumer's legal claim is a
5 pending class action lawsuit at the time of the funding. If any
6 legal claim in which a plaintiff has received non-recourse
7 civil litigation funding become a class action matter, no
8 further funding shall be permitted.

9 (d) An attorney or law firm shall not have a financial
10 interest in the civil litigation funding company providing
11 non-recourse civil litigation funding to a consumer
12 represented by that attorney or law firm.

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

20 (f) The civil litigation funding company shall have no
21 authority to make any decisions with respect to the conduct of
22 the litigation of the legal claim or any settlement or
23 resolution of the claim. The authority to make those decisions
24 remains solely with the consumer and the consumer's attorney
25 representing the consumer in the legal claim. The civil
26 litigation funding company has no right to pursue the legal

1 claim on the consumer's behalf.

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

11 (h) Notwithstanding any other provision of this Section,
12 the civil litigation funding company shall allow the consumer
13 to make payments on a funding at any time without additional
14 cost or penalty.

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

17 (1) The civil litigation funding company shall not
18 contact the consumer after the funding date in order to
19 influence any decisions with respect to the conduct of the
20 legal claim or any settlement or resolution of the claim.
21 The civil litigation funding company may contact the
22 consumer or the consumer's attorney to obtain the status of
23 the legal claim and may contact the consumer after the
24 funding date to obtain updated attorney contact
25 information.

26 (2) After the resolution date, a civil litigation

1 funding company shall not seek to collect additional funds
2 or threaten civil action for any deficiency.

3 Section 35. Assessment of fees; restrictions; calculation.

4 (a) A civil litigation funding company may not assess fees
5 for any period exceeding 36 months from the date of the
6 contract with the consumer.

7 (b) Fees assessed by the civil litigation funding company
8 shall compound at least semi-annually but shall not compound
9 based on any lesser time period.

10 (c) In calculating the annual percentage fee or rate of
11 return, a civil litigation funding company shall include all
12 charges payable directly or indirectly by the consumer and
13 shall compute the rate based only on amounts actually received
14 and retained by a consumer.

15 Section 40. Effect of communication on privileges. No
16 communication between the attorney and the civil litigation
17 funding company, as it pertains to the non-recourse civil
18 litigation funding contract, shall limit, waive, or abrogate
19 the scope or nature of any statutory or common-law privilege,
20 including, but not limited to, the work-product doctrine and
21 attorney-client privilege.

22 Section 45. Civil litigation funding company;
23 requirements.

1 (a) Unless a civil litigation funding company has first
2 registered pursuant to this Act, the civil litigation funding
3 company shall not engage in the business of non-recourse civil
4 litigation funding.

5 (b) A civil litigation funding company shall submit an
6 application of registration to the Department in a form
7 prescribed by the Department. An application filed under this
8 subsection (b) is a public record and shall contain information
9 that allows the Department to make an evaluation of the
10 character, fitness, and financial responsibility of the
11 company such that the Department may determine that the
12 business will be operated honestly or fairly within the
13 purposes of this Act. For purposes of determining a civil
14 litigation funding company's character, fitness, and financial
15 responsibility, the Department shall request a company to
16 submit: a copy of the company's articles of incorporation,
17 articles of organization, certificate of limited partnership,
18 or other organizational documents; proof of registration with
19 an Illinois registered agent; and proof of a surety bond or
20 irrevocable letter of credit, that is equal to double the
21 amount of the largest funding in the past calendar year or
22 \$50,000, whichever is greater, issued and confirmed by a
23 financial institution authorized by law to transact business in
24 the State.

25 (c) A civil litigation funding company may apply to renew a
26 registration by submitting an application for renewal in a form

1 prescribed by the Department. An application filed under this
2 subsection (c) is a public record. The registration shall
3 contain current information on all matters required in an
4 original registration.

5 Section 50. Registration fee; renewal fee.

6 (a) An application for registration or renewal of
7 registration under Section 45 shall be accompanied by either an
8 application for registration fee or a renewal of registration
9 fee, as applicable.

10 (b) The Department may, by rule, establish fees for
11 applications for registration and renewals of registration at
12 rates sufficient to cover the costs of administering this Act,
13 in the event any such fees are required. Such fees shall be
14 collected by the Department and all moneys received by the
15 Department under this Act shall be deposited in the Financial
16 Institution Fund created under Section 6z-26 of the State
17 Finance Act.

18 Section 55. Certificate or renewal of registration.

19 (a) The Department shall issue a certificate of
20 registration or a renewal of registration to a civil litigation
21 funding company that complies with Section 45 and its rules.

22 (b) The Department may refuse to issue a certificate of
23 registration if the Department determines that the character,
24 fitness, or financial responsibility of the civil litigation

1 funding company are such as to warrant belief that the business
2 will not be operated honestly or fairly within the purposes of
3 this Act.

4 (c) The Department may suspend, revoke, or refuse to renew
5 a certificate of registration for conduct that would have
6 justified denial of registration under subsection (b) of this
7 Section or for violating Section 15

8 (d) The Department may deny, suspend, revoke, or refuse to
9 renew a certificate of registration only after proper notice
10 and an opportunity for a hearing. The Illinois Administrative
11 Procedure Act applies to this Act.

12 (e) The Department may issue a temporary certificate of
13 registration while an application for registration or renewal
14 of registration is pending.

15 (f) The Department shall require a civil litigation funding
16 company registered pursuant to this Act to annually submit
17 certain data, in a form prescribed by the Department, that
18 contains:

19 (1) the number of non-recourse civil litigation
20 fundings;

21 (2) the amount of non-recourse civil litigation
22 fundings;

23 (3) the number of non-recourse civil litigation
24 fundings required to be repaid by the consumer;

25 (4) the amount charged to the consumer, including, but
26 not limited to, the annual percentage fee charged to the

1 consumer and the itemized fees charged to the consumer; and

2 (5) the dollar amount and number of cases in which the
3 realization to the civil litigation funding company was
4 less than contracted.

5 (g) The Department shall annually prepare and submit a
6 report to the Secretary of the Senate, the Clerk of the House,
7 and to the Senate and House Judiciary Committees on the status
8 of non-recourse civil litigation funding activities in the
9 State. The report shall include aggregate information reported
10 by registered civil litigation funding companies.

11 Section 60. Rules. The Department shall make and enforce
12 reasonable rules and regulations as may be necessary to carry
13 out the provisions of this Act.".