



Rep. André M. Thapedi

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

6 Section 1-5. 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. "Civil litigation funding
10 company" includes any affiliate or subsidiary of a civil
11 litigation funding company; an entity or person who buys a
12 whole or partial interest in a non-recourse civil litigation
13 funding, acts as an agent to provide a non-recourse civil
14 litigation funding from a third party for a fee, or acts as an
15 agent for a third party in providing a non-recourse civil
16 litigation funding for a fee, regardless of whether approval or

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

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

25 "Contract" means a written agreement between a consumer and
26 a civil litigation funding company that the civil litigation

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

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

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

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

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

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

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

23 "Proceeds" means those funds available for payment to the
24 civil litigation funding company that are remaining from any
25 settlement, verdict, final judgment, insurance payment, or
26 award obtained in the consumer's legal claim after reductions

1 are made under Section 2-15 of this Act.

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

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

7 Article 2. Non-Recourse Civil Litigation Funding

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

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

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

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

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

23 (D) a calculation of the annual percentage fee for each
24 180-day interval.

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

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

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

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

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

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

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

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

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

1 [Insert name of the civil litigation funding company] is
2 not accepting an assignment of your legal claim.

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

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

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

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

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

1 benefit planning regarding this transaction. You further
2 understand and agree that the funds you receive from
3 [insert name of the civil litigation funding company] shall
4 not be used to pay for or applied to the payment of
5 attorney's fees or litigation costs related to your legal
6 claim.".

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

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

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

1 of time from the funding date through the resolution date.

2 Section 2-10. Contracted fee amount.

3 (a) The civil litigation funding company shall offer the
4 consumer the option of either entering into a conventional loan
5 under the Consumer Installment Loan Act or entering into a
6 non-recourse civil litigation funding.

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

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

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

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

21 Section 2-12. Charges permitted.

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

24 (b) A licensee may charge an expedited funds delivery

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

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

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

24 (1) The civil litigation funding company shall not pay or

1 offer to pay any compensation to any attorney, law firm,
2 medical provider, chiropractor, physical therapist, or any of
3 their employees for referring a consumer to the civil
4 litigation funding company. The civil litigation funding
5 company agrees not to accept any compensation from any
6 attorney, law firm, medical provider, chiropractor, physical
7 therapist, or any of their employees, other than the funding
8 amount and any agreed upon fees the consumer assigned to the
9 civil litigation funding company out of the potential proceeds
10 of the legal claim. If a lawyer or law firm represents one or
11 more consumers with outstanding civil litigation fundings from
12 the same civil litigation funding company, that civil
13 litigation funding company may not provide any type of funding
14 to the lawyer or law firm.

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

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

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

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

14 (6) The civil litigation funding company shall not
15 knowingly enter into a non-recourse civil litigation funding
16 contract with a consumer where the consumer's legal claim is a
17 pending class action lawsuit at the time of the funding. The
18 civil litigation funding company may not discuss a consumer's
19 choice to join a class action lawsuit other than to confirm
20 that a consumer has or has not chosen to join a class action
21 lawsuit. Should any legal claim in which a plaintiff has
22 received non-recourse civil litigation funding become a class
23 action matter, no further funding shall be permitted. The civil
24 litigation funding company is prohibited from advancing,
25 loaning, assigning, or otherwise providing funds, directly or
26 indirectly, to any attorney, law firm, or related entity for

1 the purposes of researching, investigating, developing,
2 prosecuting, or otherwise representing parties in class action
3 mass tort litigation.

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

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

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

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

1 litigation funding company shall have no right to pursue the
2 legal claim on the consumer's behalf.

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

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

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

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

23 (B) Neither a civil litigation funding company, nor any
24 person acting on behalf of a civil litigation funding
25 company, shall contact the consumer after the funding date
26 in order to influence any decisions with respect to the

1 conduct of the legal claim or any settlement or resolution
2 thereof. Notwithstanding the foregoing, the civil
3 litigation funding company may contact the consumer or the
4 consumer's attorney to obtain the status of the legal claim
5 and may contact the consumer after the funding date to
6 obtain updated attorney contact information.

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

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

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

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

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

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

25 (3) the minimum, maximum, and average amount of

1 non-recourse civil litigation fundings made during the
2 preceding calendar year;

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

6 (5) the total number of non-recourse civil litigation
7 funding transactions in which the civil litigation funding
8 company received the return of the funding amount, plus any
9 agreed upon fees; the total number of non-recourse civil
10 litigation funding transactions for which the civil
11 litigation funding company received no return of the
12 funding amount or any fees; and the total number of
13 non-recourse civil litigation funding transactions in
14 which the civil litigation funding company received an
15 amount less than the contracted amount.

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

24 (c) The Department shall have the authority to conduct
25 examinations at any time of the books, records, and
26 non-recourse civil litigation funding documents of a licensee

1 or other company or person doing business without the required
2 license. Any licensee being examined must provide to the
3 Department convenient and free access at all reasonable hours
4 at its office or location to all books, records, non-recourse
5 civil litigation funding documents. The officers, directors,
6 and agents of the litigation funding company must facilitate
7 the examination and aid in the examination so far as it is in
8 their power to do so.

9 Section 2-30. Applicability.

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

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

20 Article 3. Licensure.

21 Section 3-1. Licensure requirement.

22 (a) Except as provided in subsection (b), on and after the
23 effective date of this Act, a civil litigation funding company

1 as defined by Section 1-5 must be licensed by the Department as
2 provided in this Article.

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

13 Section 3-5. Licensure.

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

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

25 (2) that the applicant has submitted such other

1 information as the Secretary may deem necessary; and

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

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

8 (c) A licensee shall appoint, in writing, the Secretary as
9 attorney-in-fact upon whom all lawful process against the
10 licensee may be served with the same legal force and validity
11 as if served on the licensee. A copy of the written
12 appointment, duly certified, shall be filed in the office of
13 the Secretary, and a copy thereof certified by the Secretary
14 shall be sufficient evidence to subject a licensee to
15 jurisdiction in a court of law. This appointment shall remain
16 in effect while any liability remains outstanding in this State
17 against the licensee. When summons is served upon the Secretary
18 as attorney-in-fact for a licensee, the Secretary shall
19 immediately notify the licensee by registered mail, enclosing
20 the summons and specifying the day of service.

21 (d) A licensee must pay an annual fee of \$1,000. In
22 addition to the annual license fee, the reasonable expense of
23 any examination or hearing by the Secretary under any
24 provisions of this Act shall be borne by the licensee. If a
25 licensee fails to submit an application for renewal by December
26 31st of the then current year, its license shall automatically

1 expire; however, the Secretary, in his or her discretion, may
2 reinstate an expired license upon:

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

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

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

8 (e) No licensee shall conduct the business of providing
9 non-recourse civil litigation funding under this Act within any
10 office, suite, room, or place of business in which any other
11 business is solicited or engaged unless the other business is
12 licensed by the Department and, in the opinion of the
13 Secretary, the other business would not be contrary to the best
14 interests of consumers and is authorized by the Secretary in
15 writing.

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

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

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

3 (2) With the exception of filing for bankruptcy, surrender
4 its license to the Secretary for cancellation. The surrender of
5 the license shall not affect the licensee's civil or criminal
6 liability for acts committed before or after the surrender or
7 entitle the licensee to a return of any part of the annual
8 license fee.

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

11 The accounts, books, records, and contracts shall be
12 maintained and serviced by the licensee, by another licensee
13 under this Act, or by the Department.

14 Article 4. Administrative Provisions

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

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

22 (2) Using any device or agreement that would have the
23 effect of charging or collecting more fees or charges than
24 allowed in this Act, including, but not limited to, entering

1 into a different type of transaction with the consumer.

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

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

8 (5) Making a misrepresentation of a material fact by an
9 applicant for licensure in obtaining or attempting to obtain a
10 license.

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

13 (A) a confession of judgment clause;

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

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

19 (7) Taking any power of attorney.

20 Section 4-10. Enforcement and remedies.

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

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

1 Practices Act.

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

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

13 (e) The Secretary may issue a cease and desist order to any
14 licensee or other person doing business without the required
15 license, when in the opinion of the Secretary the licensee or
16 other person is violating or is about to violate any provisions
17 of this Act or any rule or requirement imposed in writing by
18 the Department as a condition of granting any authorization
19 permitted by this Act. In addition to any other action
20 authorized by this Act, if the Secretary determines that a
21 civil litigation funding company is engaged in or is believed
22 to be engaged in activities that may constitute a violation of
23 this Act and the Secretary is able to show that an emergency
24 exists, the Secretary may suspend the civil litigation funding
25 company's license for a period not exceeding 180 calendar days.
26 The cease and desist order and emergency suspension permitted

1 by this subsection (e) may be issued prior to a hearing.

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

7 Within 10 business days after service of the cease and
8 desist order, the licensee or other person may request a
9 hearing in writing. The Secretary shall schedule a hearing
10 within 30 days after the request for a hearing unless otherwise
11 agreed to by the parties. The Secretary shall have the
12 authority to adopt rules for the administration of this
13 Section.

14 If it is determined that the Secretary had the authority to
15 issue the cease and desist order, he or she may issue such
16 orders as may be reasonably necessary to correct, eliminate, or
17 remedy the conduct.

18 The powers vested in the Secretary by the subsection (e)
19 are additional to any and all other powers and remedies vested
20 in the Secretary by law, and nothing in this subsection (e)
21 shall be construed as requiring that the Secretary shall employ
22 the power conferred in this subsection instead of or as a
23 condition precedent to the exercise of any other power or
24 remedy vested in the Secretary.

25 (f) The Secretary may, after 10 business days notice by
26 registered mail to the licensee at the address set forth in the

1 license stating the contemplated action an in general the
2 grounds therefore, fine the licensee an amount not exceeding
3 \$10,000 per violation, or revoke or suspend any license issued
4 by the Department if found that:

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

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

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

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

21 In every case in which a license or renewal of a
22 license is denied, the Secretary shall serve the licensee
23 with notice of his or her action, including a statement of
24 the reasons for his or her actions, either personally, or
25 by certified mail, return receipt requested. Service by
26 certified mail shall be deemed completed when the notice is

1 deposited in the U.S. Mail.

2 An order assessing a fine, an order revoking or
3 suspending a license, or an order denying or refusing to
4 renew a license shall take effect upon service of the order
5 unless the licensee requests a hearing, in writing, within
6 10 days after the date of service. In the event a hearing
7 is requested, the order shall be stayed until final
8 administrative order is entered.

9 If the licensee requests a hearing, the Secretary shall
10 schedule a hearing within 30 days after the request for a
11 hearing unless otherwise agreed to by the parties.

12 The hearing shall be held at a time and place
13 designated by the Secretary. The Secretary, and any
14 administrative law judge designated by him or her, shall
15 have the power to administer oaths and affirmations,
16 subpoena witnesses and compel their attendance, take
17 evidence, and require the production of books, papers,
18 correspondence, and other records or information that he or
19 she considers relevant or material to the inquiry.

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

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

24 Section 4-15. Bonding.

25 (a) A person or entity engaged in non-recourse civil

1 litigation funding under this Act shall post a bond to the
2 Department in the amount of \$50,000 per license or irrevocable
3 letter of credit issued and confirmed by a financial
4 institution authorized by law to transact business in the State
5 of Illinois.

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

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

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

18 Section 4-25. Rulemaking.

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

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

5 Section 4-28. Confidentiality. All information collected
6 by the Department under an examination or investigation of a
7 civil litigation funding company, including, but not limited
8 to, information collected to investigate any complaint against
9 a civil litigation funding company filed with the Department,
10 shall be maintained for the confidential use of the Department
11 and shall not be disclosed. The Department may not disclose
12 such information to anyone other than the licensee, law
13 enforcement officials, or other regulatory agencies that have
14 an appropriate regulatory interest as determined by the
15 Secretary, or to a party presenting a lawful subpoena to the
16 Department. Information and documents disclosed to a federal,
17 State, county, or local law enforcement agency shall not be
18 disclosed by the agency for any purpose to any other agency or
19 person. An order issued by the Department against a civil
20 litigation funding company shall be a public record and any
21 documents produced in discovery, filed with the administrative
22 law judge, or introduced at hearing shall be a public record,
23 except as otherwise prohibited by law.

24 Section 4-30. Judicial review. All final administrative

1 decisions of the Department under this Act are subject to
2 judicial review under the provisions of the Administrative
3 Review Law and any rules adopted pursuant thereto.

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

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

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

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

1 recommends to better regulate civil litigation funding
2 companies.

3 Article 90. Amendatory Provisions

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

6 (5 ILCS 80/4.25)

7 Sec. 4.25. Acts Act repealed on January 1, 2015 and May 31,
8 2015.

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

10 The Genetic Counselor Licensing Act.

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

12 The Non-Recourse Civil Litigation Funding Act.

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

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

16 (205 ILCS 670/21) (from Ch. 17, par. 5427)

17 Sec. 21. Application of Act. This Act does not apply to any
18 person, partnership, association, limited liability company,
19 or corporation doing business under and as permitted by any law
20 of this State or of the United States relating to banks,
21 savings and loan associations, savings banks, credit unions, or

1 licensees under the Residential Mortgage License Act for
2 residential mortgage loans made pursuant to that Act. This Act
3 does not apply to business loans. This Act does not apply to
4 payday loans. Except as provided in Section 2-10 of the
5 Non-Recourse Civil Litigation Funding Act, this Act does not
6 apply to non-recourse civil litigation funding.

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

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

10 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

11 Sec. 2Z. Violations of other Acts. Any person who knowingly
12 violates the Automotive Repair Act, the Automotive Collision
13 Repair Act, the Home Repair and Remodeling Act, the Dance
14 Studio Act, the Physical Fitness Services Act, the Hearing
15 Instrument Consumer Protection Act, the Illinois Union Label
16 Act, the Job Referral and Job Listing Services Consumer
17 Protection Act, the Travel Promotion Consumer Protection Act,
18 the Credit Services Organizations Act, the Automatic Telephone
19 Dialers Act, the Pay-Per-Call Services Consumer Protection
20 Act, the Telephone Solicitations Act, the Illinois Funeral or
21 Burial Funds Act, the Cemetery Oversight Act, the Cemetery Care
22 Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery Sales
23 Act, the High Risk Home Loan Act, the Payday Loan Reform Act,
24 the Mortgage Rescue Fraud Act, subsection (a) or (b) of Section

1 3-10 of the Cigarette Tax Act, subsection (a) or (b) of Section
2 3-10 of the Cigarette Use Tax Act, the Electronic Mail Act, the
3 Internet Caller Identification Act, paragraph (6) of
4 subsection (k) of Section 6-305 of the Illinois Vehicle Code,
5 Section 11-1431, 18d-115, 18d-120, 18d-125, 18d-135, 18d-150,
6 or 18d-153 of the Illinois Vehicle Code, Article 3 of the
7 Residential Real Property Disclosure Act, the Automatic
8 Contract Renewal Act, the Non-Recourse Civil Litigation
9 Funding Act, or the Personal Information Protection Act commits
10 an unlawful practice within the meaning of this Act.

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

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