



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2301

by Rep. André M. Thapedi

SYNOPSIS AS INTRODUCED:

New Act

Creates the Non-Recourse Civil Litigation Funding Act. Provides that all contracts for non-recourse civil litigation funding must meet specified criteria. Provides that the contract shall provide that the consumer may cancel the contract within 5 business days following the consumer's receipt of funds, without penalty or further obligation. Specifies the notice requirements for contracts. Sets requirements for fee calculations. Prohibits unregistered companies from entering into a non-recourse civil litigation funding transaction with consumers. Provides requirements for the Department of Financial and Professional Regulation to consider while making decisions regarding registration. Authorizes the Department to make and enforce reasonable rules and regulations as may be necessary to carry out the provisions of the Act.

LRB098 08543 MGM 38655 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

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
17 Professional Regulation.

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

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

1 claim to the civil litigation funding company.

2 Section 10. Contract provisions.

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

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

8 (A) the total dollar amount of funds to be paid to
9 the consumer;

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

11 (C) the total dollar amount being assigned by the
12 consumer to the civil litigation funding company, set
13 forth in 6-month intervals for 36 months, including all
14 fees;

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

17 (E) the annual percentage rate of return,
18 calculated as of the last day of each 6-month interval,
19 including frequency of compounding.

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

25 "Consumer's right to cancellation: You may cancel this

1 contract without penalty or further obligation within 5
2 business days after the date you receive funds from (insert
3 name of civil litigation funding company).".

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

19 (3) The contract shall contain the following statement
20 in at least 12-point bold face type:

21 "The civil litigation funding company agrees that
22 it shall have no right to and will not make any
23 decisions with respect to the conduct of the underlying
24 legal claim or any settlement or resolution thereof and
25 that the right to make those decisions remains solely
26 with you and your attorney in the legal claim.".

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

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

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

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

19 (A) the attorney representing the consumer in the
20 legal claim has reviewed the contract and all costs and
21 fees have been disclosed, including the annualized
22 rate of return applied to calculate the amount to be
23 paid by the consumer;

24 (B) the attorney representing the consumer in the
25 legal claim is being paid on a contingency basis, per a
26 written fee agreement;

1 (C) all proceeds of the civil litigation will be
2 disbursed via the trust account of the attorney
3 representing the consumer in the legal claim or a
4 settlement fund established to receive the proceeds of
5 the civil litigation from the defendant on behalf of
6 the consumer;

7 (D) the attorney representing the consumer in the
8 legal claim is following the written instructions of
9 the consumer with regard to the non-recourse civil
10 litigation funding;

11 (E) the attorney representing the consumer in the
12 legal claim shall not be paid or offered to be paid
13 commissions or referral fees; and

14 (F) whether the attorney representing the consumer
15 in the legal claim does or does not have a financial
16 interest in the civil litigation funding company.

17 (7) All contracts to the consumer must contain the
18 following statement, in plain language in a box with
19 15-point, bold face type, in all capitalized letters:

20 "IF THERE IS NO RECOVERY OF PROCEEDS FROM YOUR LEGAL
21 CLAIM, OR IF THERE IS NOT ENOUGH MONEY TO PAY THE CIVIL
22 LITIGATION FUNDING COMPANY IN FULL, YOU WILL NOT OWE THE
23 CIVIL LITIGATION FUNDING COMPANY ANYTHING IN EXCESS OF YOUR
24 RECOVERY, UNLESS YOU VIOLATED THIS PURCHASE AGREEMENT."

25 (b) If a dispute arises between the consumer and the civil
26 litigation funding company concerning the contract for

1 non-recourse civil litigation funding, the responsibilities of
2 the attorney representing the consumer in the legal claim shall
3 be no greater than the attorney's responsibilities under the
4 Illinois Rules of Professional Conduct.

5 Section 15. Standards and practices. The civil litigation
6 funding company shall not pay or offer to pay commissions or
7 referral fees to any attorney or employee of a law firm or to
8 any medical provider, chiropractor, or physical therapist or
9 their employees for referring a consumer to the civil
10 litigation funding company.

11 The civil litigation funding company shall not accept any
12 commissions, referral fees, or rebates from any attorney or
13 employee of a law firm or any medical provider, chiropractor,
14 or physical therapist or their employees.

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

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

1 Section 20. Assessment of fees; restrictions; calculation.

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

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

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

13 Section 25. Effect of communication on privileges. No
14 communication between the attorney and the civil litigation
15 funding company, as it pertains to the non-recourse civil
16 litigation funding contract, shall limit, waive, or abrogate
17 the scope or nature of any statutory or common-law privilege,
18 including, but not limited to, the work-product doctrine and
19 attorney-client privilege.

20 Section 30. Civil litigation funding company;
21 requirements.

22 (a) Unless a civil litigation funding company has first
23 registered pursuant to this Act, the civil litigation funding

1 company shall not engage in the business of non-recourse civil
2 litigation funding.

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

23 (c) A civil litigation funding company may apply to renew a
24 registration by submitting an application for renewal in a form
25 prescribed by the Department. An application filed under this
26 subsection (c) is a public record. The registration shall

1 contain current information on all matters required in an
2 original registration.

3 Section 35. Registration fee; renewal fee.

4 (a) An application for registration or renewal of
5 registration under Section 30 shall be accompanied by either an
6 application for registration fee or a renewal of registration
7 fee, as applicable.

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

16 Section 40. Certificate or renewal of registration.

17 (a) The Department shall issue a certificate of
18 registration or a renewal of registration to a civil litigation
19 funding company that complies with Section 30 and its rules.

20 (b) The Department may refuse to issue a certificate of
21 registration if the Department determines that the character,
22 fitness, or financial responsibility of the civil litigation
23 funding company are such as to warrant belief that the business
24 will not be operated honestly or fairly within the purposes of

1 this Act.

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

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

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

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

17 (1) the number of non-recourse civil litigation
18 fundings;

19 (2) the amount of non-recourse civil litigation
20 fundings;

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

23 (4) the amount charged to the consumer, including, but
24 not limited to, the annual percentage fee charged to the
25 consumer and the itemized fees charged to the consumer; and

26 (5) the dollar amount and number of cases in which the

1 realization to the civil litigation funding company was
2 less than contracted.

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

9 Section 45. Rules. The Department shall make and enforce
10 reasonable rules and regulations as may be necessary to carry
11 out the provisions of this Act.