



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3391

Introduced 2/14/2014, by Sen. Dale A. Righter

SYNOPSIS AS INTRODUCED:

See Index

Creates the Non-Recourse Consumer Lawsuit Funding Act. Provides that all contracts for non-recourse consumer lawsuit funding shall be written, provide the total funding amount to the customer, itemize one-time fees, allow the customer to cancel contract within 10 business days following receipt of the funding amount without penalty or further obligation, and other specified criteria. Provides that any attorney's fee or medical lien takes priority over any lien of the non-recourse consumer lawsuit funding company. Contains a provision concerning standards and practices of non-recourse consumer lawsuit funding companies. Provides criteria for non-recourse consumer lawsuit funding companies to receive and retain licenses, the closing of its business or surrendering of the license, and prohibited acts. Contains provisions for enforcement, rulemaking, bonding, and judicial review. Provides that the total amount of financing provided by a non-recourse consumer lawsuit funding company per consumer per legal claim shall not exceed \$40,000. Provides that under no circumstances shall the total amount of charges, interest, fees, or any other charges, when taken together, exceed 80% of the proceeds from the legal claim. Amends the Regulatory Sunset Act to provide for the repeal of the Non-Recourse Consumer Lawsuit Funding Act on May 31, 2015. Amends the Consumer Fraud and Deceptive Business Practices Act to provide that a person who knowingly violates the Non-Recourse Consumer Lawsuit Funding Act commits an unlawful practice. Amends the Consumer Installment Loan Act. Provides that no licensee shall engage in the business of providing non-recourse consumer lawsuit funding, except in compliance with that Act. Effective immediately.

LRB098 19745 ZMM 54958 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 ARTICLE 1.

5 Section 1-1. Short title. This Act may be cited as the
6 Non-Recourse Consumer Lawsuit Funding Act.

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

8 "Consumer" means a natural person residing or domiciled in
9 Illinois or who elects to enter into a transaction under this
10 Act in Illinois, whether it be in-person, over the internet, by
11 facsimile, or any other electronic means, and who has a pending
12 legal claim and is represented by an attorney at the time he or
13 she enters into a contract for non-recourse consumer lawsuit
14 funding.

15 "Contract" means a written agreement between a consumer and
16 a non-recourse consumer lawsuit funding company that the
17 non-recourse consumer lawsuit funding company agrees to
18 provide non-recourse consumer lawsuit funding to the consumer
19 in compliance with Article 2.

20 "Department" means the Illinois Department of Financial
21 and Professional Regulation.

22 "Funding amount" means the dollar amount of funds provided

1 to the consumer by the non-recourse consumer lawsuit funding
2 company subsequent to the execution of the contract as
3 consideration for the assignment of or purchase of a contingent
4 right to receive a portion of the proceeds of the legal claim.

5 "Funding date" means the date on which the funding amount
6 is paid to the consumer by the non-recourse consumer lawsuit
7 funding company.

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

9 "Licensee" means any non-recourse consumer lawsuit funding
10 company licensed in accordance with Article 3.

11 "Non-recourse consumer lawsuit funding" means a lending
12 transaction, regulated under this Act, of any amount in which a
13 non-recourse consumer lawsuit funding company purchases and a
14 consumer assigns to the non-recourse consumer lawsuit funding
15 company the contingent right to receive a portion of the
16 potential proceeds of a settlement, judgment, award, or verdict
17 obtained in the consumer's legal claim as repayment of the loan
18 principle and accrued interest.

19 "Non-recourse consumer lawsuit funding company" means a
20 person or entity that enters into a non-recourse consumer
21 lawsuit funding transaction with a consumer. "Non-recourse
22 consumer lawsuit funding company" includes any affiliate or
23 subsidiary of a non-recourse consumer lawsuit funding company;
24 an entity or person who buys a whole or partial interest in a
25 non-recourse consumer lawsuit funding, acts as an agent to
26 provide non-recourse consumer lawsuit funding from a third

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

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

26 "Resolution date" means the date the funding amount plus

1 the agreed upon fees from the legal claim are received by the
2 non-recourse consumer lawsuit funding company.

3 "Secretary" means the Illinois Secretary of Financial and
4 Professional Regulation.

5 ARTICLE 2. Non-Recourse Consumer Lawsuit Funding

6 Section 2-5. Contract provisions. All contracts for
7 non-recourse consumer lawsuit funding shall be in writing and
8 comply with all of the following requirements:

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

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

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

14 (C) the total dollar amount owed by the consumer to the
15 non-recourse consumer lawsuit funding company, set forth
16 up to 1,080 days beginning at the 11th business day after
17 the funding date, then at 30 days after the funding date
18 and at every 30 days thereafter; the total dollar amount
19 shall be calculated using the identical methodology used by
20 the non-recourse consumer lawsuit funding company to
21 calculate the contracted fee amount under Section 2-10.

22 The Secretary shall prescribe by rule the format of the
23 chart that clearly discloses to the consumer all the
24 information in this subsection. Until the Secretary makes such

1 a rule, each non-recourse consumer lawsuit funding company must
2 have a chart format approved for distribution by the Secretary.

3 No contract for non-recourse consumer lawsuit funding
4 shall be enforceable against the consumer unless it complies
5 entirely with this Section 2-5.

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

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

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

1 order, by insured, registered, or certified United States mail,
2 postmarked within 10 business days after receipt of the funding
3 amount, to the address specified in the contract for
4 cancellation.

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

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

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

1 lawsuit funding company] is not accepting an assignment of
2 your legal claim.

3 (C) [Insert name of the non-recourse consumer lawsuit
4 funding company] agrees that you may make payments on a
5 funding at any time without additional cost or penalty.

6 (D) [Insert name of the non-recourse consumer lawsuit
7 funding company] is not a law firm and is prohibited from
8 rendering legal advice. Advice about the conduct of the
9 legal claim or any settlement or resolution shall be
10 directed to a properly licensed attorney."

11 (4) All contracts with the consumer must contain the
12 following statement, in plain language in a box with 15-point,
13 bold face type, in all capitalized letters, stating the
14 following:

15 "THE FUNDING AMOUNT AND AGREED UPON FEES SHALL ONLY BE PAID
16 FROM THE PROCEEDS OF YOUR LEGAL CLAIM AND SHALL ONLY BE
17 PAID TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM
18 YOUR LEGAL CLAIM. YOU WILL NOT OWE [INSERT NAME OF THE
19 NON-RECOURSE CONSUMER LAWSUIT FUNDING COMPANY] ANYTHING IF
20 THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM."

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

24 "Do not sign this Agreement before you read it completely
25 or if it contains any blank spaces. You are entitled to a
26 completely filled-in copy of this Agreement. Before you

1 sign this Agreement you should obtain the advice of an
2 attorney. Depending on the circumstances, you may want to
3 consult a tax, public, or private benefit planning or
4 financial professional. You acknowledge that your attorney
5 in the legal claim has provided no tax, public, or private
6 benefit planning regarding this transaction. You further
7 understand and agree that the funds you receive from
8 [insert name of the non-recourse consumer lawsuit funding
9 company] shall not be used to pay for or applied to the
10 payment of attorney's fees or litigation costs related to
11 your legal claim.".

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

15 (7) The non-recourse consumer lawsuit funding company
16 shall provide the consumer's attorney with a written
17 notification of the non-recourse consumer lawsuit funding
18 provided to the consumer 3 business days before the funding
19 date by way of postal mail, courier service, facsimile, e-mail
20 return receipt acknowledged, or other means of proof of
21 delivery method unless there is a written acknowledgment by the
22 attorney representing the consumer in the legal claim as to the
23 terms of the contract. No communication between a consumer's
24 attorney and a non-recourse consumer lawsuit funding company
25 pertaining to a consumer's non-recourse consumer lawsuit
26 funding transaction shall limit, waive, or abrogate any

1 statutory or common-law privilege, including the
2 attorney-client privilege or the work-product doctrine.
3 Notwithstanding notice of the non-recourse consumer lawsuit
4 funding, the consumer's attorney is not responsible for paying
5 or ensuring payment of the consumer's obligation.

6 (8) Except as provided under subsection (d) of Section 2-10
7 of this Act, the contracted return of the funding amount, plus
8 any agreed upon fees assigned to the non-recourse consumer
9 lawsuit funding company on the resolution date shall not be
10 determined as a percentage of the recovery from the legal claim
11 but shall be set as a contractually determined amount based
12 upon intervals of time from the funding date through the
13 resolution date.

14 Section 2-10. Contracted fee amount.

15 (a) The total amount of financing provided by a
16 non-recourse consumer lawsuit funding company per consumer per
17 legal claim shall not exceed \$40,000.

18 The company shall not charge a fee in excess of a 40%
19 annual percentage rate.

20 For the purposes of this Section, the annual percentage
21 rate shall be calculated in accordance with the federal Truth
22 in Lending Act.

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

25 (c) Except for the fees set forth in this Section and

1 Section 20, the non-recourse consumer lawsuit funding company
2 shall not impose on a consumer any additional finance charges,
3 interest, fees, or charges of any sort for any purpose.

4 (d) Under no circumstances shall the total amount of
5 finance charges, interest, fees, or any other charges, when
6 taken together, exceed 80% of the proceeds from the legal
7 claim.

8 Section 2-12. Charges permitted.

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

11 (b) A licensee may charge an expedited funds delivery
12 option charge not to exceed the actual cost of delivery or \$20,
13 whichever is less. Expedited funds delivery options,
14 including, but not limited to, overnight delivery, electronic
15 fund transfers, and Automated Clearing House (ACH)
16 transactions may be offered to the consumer as a choice of the
17 method of the delivery of funds. The fund delivery charge is
18 fully earned at the time that each funding transaction is made
19 and shall not be subject to refund. Details and receipts of
20 delivery shall be provided in an invoice to the consumer no
21 more than 10 business days after the funding date. A no-charge
22 delivery option must be offered to the consumer as a choice.

23 Section 2-15. Claim priorities. Any lien arising out of the
24 underlying consumer's legal claim for subrogation claims,

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

10 Section 2-20. Standards and practices. Each non-recourse
11 consumer lawsuit funding company shall adhere to the following:

12 (1) The non-recourse consumer lawsuit funding company
13 shall not pay or offer to pay any compensation to any attorney,
14 law firm, medical provider, chiropractor, physical therapist,
15 or any of their employees for referring a consumer to the
16 non-recourse consumer lawsuit funding company. The
17 non-recourse consumer lawsuit funding company agrees not to
18 accept any compensation from any attorney, law firm, medical
19 provider, chiropractor, physical therapist, or any of their
20 employees, other than the funding amount and any agreed upon
21 fees the consumer assigned to the non-recourse consumer lawsuit
22 funding company out of the potential proceeds of the legal
23 claim. If a lawyer or law firm represents one or more consumers
24 with outstanding non-recourse consumer lawsuit fundings from
25 the same non-recourse consumer lawsuit funding company, that

1 non-recourse consumer lawsuit funding company may not provide
2 any type of funding to the lawyer or law firm.

3 (2) The non-recourse consumer lawsuit funding company
4 shall not advertise false or intentionally misleading
5 information regarding its product or services.

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

16 (4) The non-recourse consumer lawsuit funding company
17 shall not offer single premium credit life, disability, or
18 unemployment insurance that will be financed through a
19 non-recourse consumer lawsuit funding transaction.

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

1 the consumer. Principal terms shall include all items that must
2 be disclosed by Section 2-5.

3 (6) The non-recourse consumer lawsuit funding company
4 shall not knowingly enter into a non-recourse consumer lawsuit
5 funding contract with a consumer where the consumer's legal
6 claim is a pending class action lawsuit at the time of the
7 funding. The non-recourse consumer lawsuit funding company may
8 not discuss a consumer's choice to join a class action lawsuit
9 other than to confirm that a consumer has or has not chosen to
10 join a class action lawsuit. Should any legal claim in which a
11 plaintiff has received non-recourse consumer lawsuit funding
12 become a class action matter, no further funding shall be
13 permitted. The non-recourse consumer lawsuit funding company
14 is prohibited from advancing, loaning, assigning, or otherwise
15 providing funds, directly or indirectly, to any attorney, law
16 firm, or related entity for the purposes of researching,
17 investigating, developing, prosecuting, or otherwise
18 representing parties in class action mass tort litigation.

19 (7) The return of the funding amount to the non-recourse
20 consumer lawsuit funding company, plus any agreed upon fees,
21 shall be rendered only out of the funds, if any, of the
22 realized settlement, judgment, award, or verdict the consumer
23 may receive from the legal claim. Under no circumstances shall
24 the non-recourse consumer lawsuit funding company have
25 recourse for the funding amount beyond 80% of the consumer's
26 proceeds from the legal claim.

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

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

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

24 (11) Contact between the non-recourse consumer lawsuit
25 funding company and the consumer shall be subject to the
26 following limitations:

1 (A) Neither a non-recourse consumer lawsuit funding
2 company, nor any person acting on behalf of a non-recourse
3 consumer lawsuit funding company, shall contact a consumer
4 prior to the consumer obtaining legal representation and
5 initiating a legal claim.

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

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

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

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

25 (b) A licensee shall collect and maintain information

1 annually for a report that shall disclose in detail and under
2 appropriate headings:

3 (1) the total number of non-recourse consumer lawsuit
4 fundings made during the previous calendar year;

5 (2) the total number of non-recourse consumer lawsuit
6 fundings outstanding as of December 31st of the preceding
7 calendar year;

8 (3) the minimum, maximum, and average amount of
9 non-recourse consumer lawsuit fundings made during the
10 preceding calendar year;

11 (4) the average annual percentage rate of the
12 non-recourse consumer lawsuit fundings made during the
13 preceding year; and

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

25 The report shall be verified by the oath or affirmation of
26 the Chief Executive Officer, Chief Financial Officer, or other

1 duly authorized representative of the licensee. The report must
2 be filed with the Secretary no later than March 1 of the year
3 following the year for which the report discloses the
4 information specified in this subsection (b). The Secretary may
5 impose a fine of \$50 per day upon the licensee for each day
6 beyond the filing deadline that the report is not filed.

7 For the purposes of this Section, the annual percentage
8 rate shall be calculated in accordance with the federal Truth
9 in Lending Act.

10 (c) The Department shall have the authority to conduct
11 examinations at any time of the books, records, and
12 non-recourse consumer lawsuit funding documents of a licensee
13 or other company or person doing business without the required
14 license. Any licensee being examined must provide to the
15 Department convenient and free access at all reasonable hours
16 at its office or location to all books, records, non-recourse
17 consumer lawsuit funding documents. The officers, directors,
18 and agents of the non-recourse consumer lawsuit funding company
19 must facilitate the examination and aid in the examination so
20 far as it is in their power to do so. The Secretary shall, by
21 rule, set the fee to be charged for each examination day,
22 including travel expenses for out-of-state licensed locations.
23 The fee shall reasonably reflect actual costs.

24 Section 2-30. Applicability. The contingent right to
25 receive a portion of the potential proceeds of a legal claim is

1 assignable and valid for the purposes of obtaining funding from
2 a licensee under this Section.

3 Section 2-35. Limitation to this Act. Except as provided
4 under subsection (b) of Section 3-1 of this Act, non-recourse
5 consumer lawsuit funding shall not be offered under any other
6 Act, including, but not limited to, the Consumer Installment
7 Loan Act.

8 ARTICLE 3. Licensure.

9 Section 3-1. Licensure requirement.

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

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

1 Section 3-5. Licensure.

2 (a) An application for a license shall be in writing and in
3 a form prescribed by the Secretary. Applicants must also submit
4 a non-refundable application fee of \$2,500, due at the time of
5 the application. The Secretary may not issue a non-recourse
6 consumer lawsuit funding license unless and until the following
7 findings are made:

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

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

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

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

21 (c) A licensee shall appoint, in writing, the Secretary as
22 attorney-in-fact upon whom all lawful process against the
23 licensee may be served with the same legal force and validity
24 as if served on the licensee. A copy of the written
25 appointment, duly certified, shall be filed in the office of

1 the Secretary, and a copy thereof certified by the Secretary
2 shall be sufficient evidence to subject a licensee to
3 jurisdiction in a court of law. This appointment shall remain
4 in effect while any liability remains outstanding in this State
5 against the licensee. When summons is served upon the Secretary
6 as attorney-in-fact for a licensee, the Secretary shall
7 immediately notify the licensee by registered mail, enclosing
8 the summons and specifying the day of service.

9 (d) A licensee must pay an annual fee of \$1,000. In
10 addition to the annual license fee, the reasonable expense of
11 any examination or hearing by the Secretary under any
12 provisions of this Act shall be borne by the licensee. If a
13 licensee fails to submit an application for renewal by December
14 31st of the then current year, its license shall automatically
15 expire; however, the Secretary, in his or her discretion, may
16 reinstate an expired license upon:

17 (1) payment of the annual fee within 30 days of the
18 date of expiration; and

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

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

22 (e) No licensee shall conduct the business of providing
23 non-recourse consumer lawsuit funding under this Act within any
24 office, suite, room, or place of business in which any other
25 business is solicited or engaged unless the other business is
26 licensed by the Department and, in the opinion of the

1 Secretary, the other business would not be contrary to the best
2 interests of consumers and is authorized by the Secretary in
3 writing.

4 (f) The Secretary shall maintain a list of licensees that
5 shall be available to interested consumers and lenders and the
6 public. The Secretary shall maintain a toll-free number whereby
7 consumers may obtain information about licensees. The
8 Secretary shall also establish a complaint process under which
9 an aggrieved consumer may file a complaint against a licensee
10 or non-licensee who violates any provision of this Act.

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

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

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

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

24 The accounts, books, records, and contracts shall be
25 maintained and serviced by the licensee, by another licensee

1 under this Act, or by the Department.

2 ARTICLE 4. Administrative Provisions

3 Section 4-5. Prohibited acts. A licensee or unlicensed
4 person or entity entering into non-recourse consumer lawsuit
5 funding may not commit, or have committed, on behalf of the
6 licensee or unlicensed person or entity, any of the following
7 acts:

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

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

14 (3) Engaging in unfair, deceptive, or fraudulent practices
15 related to the non-recourse consumer lawsuit funding.

16 (4) Threatening to take any action against a consumer that
17 is prohibited by this Act or making any misleading or deceptive
18 statements regarding the non-recourse consumer lawsuit
19 funding.

20 (5) Making a misrepresentation of a material fact by an
21 applicant for licensure in obtaining or attempting to obtain a
22 license.

23 (6) Including any of the following provisions in
24 non-recourse consumer lawsuit funding contracts:

- 1 (A) a confession of judgment clause;
- 2 (B) a mandatory arbitration clause that is oppressive,
3 unfair, unconscionable, or substantially in derogation of
4 the rights of consumers; or
- 5 (C) a provision that the consumer agrees not to assert
6 any claim or defense arising out of the contract.
- 7 (7) Taking any power of attorney.

8 Section 4-10. Enforcement and remedies.

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

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

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

18 (d) Subject to the Illinois Administrative Procedure Act
19 and any other applicable Department statutes and rules, the
20 Secretary may hold hearings, make findings of fact, conclusions
21 of law, issue cease and desist orders, have the power to issue
22 fines of up to \$10,000 per violation, refer the matter to the
23 appropriate law enforcement agency for prosecution under this
24 Act, and suspend or revoke a license granted under this Act.
25 All proceedings shall be open to the public.

1 (e) The Secretary may issue a cease and desist order to any
2 licensee or other person doing business without the required
3 license, when in the opinion of the Secretary the licensee or
4 other person is violating or is about to violate any provisions
5 of this Act or any rule or requirement imposed in writing by
6 the Department as a condition of granting any authorization
7 permitted by this Act. In addition to any other action
8 authorized by this Act, if the Secretary determines that a
9 non-recourse consumer lawsuit funding company is engaged in or
10 is believed to be engaged in activities that may constitute a
11 violation of this Act and the Secretary is able to show that an
12 emergency exists, the Secretary may suspend the non-recourse
13 consumer lawsuit funding company's license for a period not
14 exceeding 180 calendar days. The cease and desist order and
15 emergency suspension permitted by this subsection (e) may be
16 issued prior to a hearing.

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

22 Within 10 business days after service of the cease and
23 desist order, the licensee or other person may request a
24 hearing in writing. The Secretary shall schedule a hearing
25 within 30 days after the request for a hearing unless otherwise
26 agreed to by the parties. The Secretary shall have the

1 authority to adopt rules for the administration of this
2 Section.

3 If it is determined that the Secretary had the authority to
4 issue the cease and desist order, he or she may issue such
5 orders as may be reasonably necessary to correct, eliminate, or
6 remedy the conduct.

7 The powers vested in the Secretary by the subsection (e)
8 are additional to any and all other powers and remedies vested
9 in the Secretary by law, and nothing in this subsection (e)
10 shall be construed as requiring that the Secretary shall employ
11 the power conferred in this subsection instead of or as a
12 condition precedent to the exercise of any other power or
13 remedy vested in the Secretary.

14 (f) The Secretary may, after 10 business days notice by
15 registered mail to the licensee at the address set forth in the
16 license stating the contemplated action and in general the
17 grounds therefore, fine the licensee an amount not exceeding
18 \$10,000 per violation, or revoke or suspend any license issued
19 by the Department if found that:

20 (1) the licensee has failed to comply with any
21 provision of this Act or any order, decision, finding,
22 rule, regulation, or direction of the Secretary lawfully
23 made under the authority of this Act; or

24 (2) any fact or condition exists that, if it had
25 existed at the time of the original application for the
26 license, clearly would have warranted the Secretary in

1 refusing to issue the license.

2 No revocation, suspension, or surrender of any license
3 shall impair or affect the obligation of any pre-existing
4 lawful contract between the non-recourse consumer lawsuit
5 funding company and a consumer.

6 The Secretary may issue a new license to a licensee
7 whose license has been revoked when facts or conditions
8 that clearly would have warranted the Secretary in refusing
9 originally to issue the license no longer exist.

10 In every case in which a license or renewal of a
11 license is denied, the Secretary shall serve the licensee
12 with notice of his or her action, including a statement of
13 the reasons for his or her actions, either personally, or
14 by certified mail, return receipt requested. Service by
15 certified mail shall be deemed completed when the notice is
16 deposited in the U.S. Mail.

17 An order assessing a fine, an order revoking or
18 suspending a license, or an order denying or refusing to
19 renew a license shall take effect upon service of the order
20 unless the licensee requests a hearing, in writing, within
21 10 days after the date of service. In the event a hearing
22 is requested, the order shall be stayed until final
23 administrative order is entered.

24 If the licensee requests a hearing, the Secretary shall
25 schedule a hearing within 30 days after the request for a
26 hearing unless otherwise agreed to by the parties.

1 The hearing shall be held at a time and place
2 designated by the Secretary. The Secretary, and any
3 administrative law judge designated by him or her, shall
4 have the power to administer oaths and affirmations,
5 subpoena witnesses and compel their attendance, take
6 evidence, and require the production of books, papers,
7 correspondence, and other records or information that he or
8 she considers relevant or material to the inquiry.

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

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

13 Section 4-15. Bonding.

14 (a) A person or entity engaged in non-recourse consumer
15 lawsuit funding under this Act shall post a bond to the
16 Department in the amount of \$50,000 per license or irrevocable
17 letter of credit issued and confirmed by a financial
18 institution authorized by law to transact business in the State
19 of Illinois.

20 (b) A bond posted under subsection (a) must continue in
21 effect for the period of licensure and for 3 additional years
22 if the bond is still available. The bond must be available to
23 pay damages and penalties to be a consumer harmed by a
24 violation of this Act.

25 (c) From time to time the Secretary may require a licensee

1 to file a bond in an additional sum if the Secretary determines
2 it to be necessary. In no case shall the bond be more than the
3 outstanding liabilities of the licensee.

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

7 Section 4-25. Rulemaking.

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

14 (b) The Department may adopt rules in connection with the
15 activities of licensees that are necessary and appropriate for
16 the protection of the consumers in this State. These rules
17 shall be consistent with this Act.

18 Section 4-28. Confidentiality. All information collected
19 by the Department under an examination or investigation of a
20 non-recourse consumer lawsuit funding company, including, but
21 not limited to, information collected to investigate any
22 complaint against a non-recourse consumer lawsuit funding
23 company filed with the Department, shall be maintained for the

1 confidential use of the Department and shall not be disclosed.
2 The Department may not disclose such information to anyone
3 other than the licensee, law enforcement officials, or other
4 regulatory agencies that have an appropriate regulatory
5 interest as determined by the Secretary, or to a party
6 presenting a lawful subpoena to the Department. Information and
7 documents disclosed to a federal, State, county, or local law
8 enforcement agency shall not be disclosed by the agency for any
9 purpose to any other agency or person. An order issued by the
10 Department against a non-recourse consumer lawsuit funding
11 company shall be a public record and any documents produced in
12 discovery, filed with the administrative law judge, or
13 introduced at hearing shall be a public record, except as
14 otherwise prohibited by law.

15 Section 4-30. Judicial review. All final administrative
16 decisions of the Department under this Act are subject to
17 judicial review under the provisions of the Administrative
18 Review Law and any rules adopted pursuant thereto.

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

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

1 Section 4-48. Consumer protection study. The Department
2 shall conduct a study to be reported to the Governor and the
3 leaders of the General Assembly no later than February 1, 2015,
4 addressing the adequacy of the consumer protections contained
5 in this Act. The study shall include, but not be limited to:
6 (1) an analysis of the average percentage of a consumer's
7 settlement that is used to return the funding amount in each
8 transaction; (2) a survey of consumer complaints filed against
9 non-recourse consumer lawsuit funding companies; (3) a
10 description of the benefits and shortcomings of non-recourse
11 consumer lawsuit funding to consumers; and (4) any reforms that
12 the Secretary recommends to better regulate non-recourse
13 consumer lawsuit funding companies.

14 ARTICLE 90. Amendatory Provisions

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

17 (5 ILCS 80/4.25)

18 Sec. 4.25. Acts Act repealed on January 1, 2015 and May 31,
19 2015.

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

21 The Genetic Counselor Licensing Act.

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

23 The Non-Recourse Consumer Lawsuit Funding Act.

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

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

4 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

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

1 Residential Real Property Disclosure Act, the Automatic
2 Contract Renewal Act, the Non-Recourse Consumer Lawsuit
3 Funding Act, or the Personal Information Protection Act commits
4 an unlawful practice within the meaning of this Act.

5 (Source: P.A. 96-863, eff. 1-19-10; 96-1369, eff. 1-1-11;
6 96-1376, eff. 7-29-10; 97-333, eff. 8-12-11.)

7 Section 90-15. The Consumer Installment Loan Act is amended
8 by changing Section 1 as follows:

9 (205 ILCS 670/1) (from Ch. 17, par. 5401)

10 Sec. 1. License required to engage in business. No person,
11 partnership, association, limited liability company, or
12 corporation shall engage in the business of making loans of
13 money in a principal amount not exceeding \$40,000, and charge,
14 contract for, or receive on any such loan a greater rate of
15 interest, discount, or consideration therefor than the lender
16 would be permitted by law to charge if he were not a licensee
17 hereunder, except as authorized by this Act after first
18 obtaining a license from the Director of Financial Institutions
19 (hereinafter called the Director). No licensee, or employee or
20 affiliate thereof, that is licensed under the Payday Loan
21 Reform Act shall obtain a license under this Act except that a
22 licensee under the Payday Loan Reform Act may obtain a license
23 under this Act for the exclusive purpose and use of making
24 title-secured loans, as defined in subsection (a) of Section 15

1 of this Act and governed by Title 38, Section 110.300 of the
2 Illinois Administrative Code. For the purpose of this Section,
3 "affiliate" means any person or entity that directly or
4 indirectly controls, is controlled by, or shares control with
5 another person or entity. A person or entity has control over
6 another if the person or entity has an ownership interest of
7 25% or more in the other. No licensee shall engage in the
8 business of providing non-recourse consumer lawsuit funding,
9 as defined by the Non-Recourse Consumer Lawsuit Funding Act,
10 except in compliance with that Act.

11 (Source: P.A. 96-936, eff. 3-21-11; 97-420, eff. 1-1-12.)

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 5 ILCS 80/4.25

5 815 ILCS 505/2Z from Ch. 121 1/2, par. 262Z

6 205 ILCS 670/1 from Ch. 17, par. 5401