

# SB1396



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

SB1396

Introduced 2/20/2015, by Sen. William R. Haine

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Civil Justice Funding Act. Establishes requirements for civil justice funding contracts, prohibitions on civil justice funding companies, disclosure requirements, limitations on fees, prohibitions on attorneys, and a requirement to register with the Department of Financial and Professional Regulation before engaging in civil justice funding. Effective July 1, 2015.

LRB099 09155 MGM 29352 b

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 Civil  
5 Justice Funding Act.

6 Section 5. Definitions. As used in this Act:

7 "Advertise" means publishing or disseminating any written,  
8 electronic, or printed communication or any communication by  
9 means of recorded telephone messages or transmitted on radio,  
10 television, the Internet, or similar communications media,  
11 including film strips, motion pictures, and videos, published,  
12 disseminated, circulated, or placed before the public,  
13 directly or indirectly, for the purpose of inducing a consumer  
14 to enter into a civil justice funding.

15 "Charges" means the amount of money to be paid to the civil  
16 justice funding company by or on behalf of the consumer above  
17 the funded amount provided by or on behalf of the company to an  
18 Illinois consumer pursuant to this Act. Charges include all  
19 administrative, origination, underwriting, or other fees, no  
20 matter how denominated.

21 "Civil justice funding" means a non-recourse transaction  
22 in which a civil justice funding company purchases and a  
23 consumer assigns to the company a contingent right to receive

1 an amount of the potential proceeds of a settlement, judgment,  
2 award, or verdict obtained in the consumer's legal claim.

3 "Civil justice funding company" or "company" means a person  
4 or entity that enters into a civil justice funding with an  
5 Illinois consumer. "Civil justice funding company" or  
6 "company" does not include:

7 (1) an immediate family member of the consumer;

8 (2) a bank, lender, financing entity, or other special  
9 purpose entity:

10 (A) that provides financing to a civil justice  
11 funding company; or

12 (B) to which a civil justice funding company grants  
13 a security interest or transfers any rights or interest  
14 in a civil justice funding; and

15 (3) an attorney or accountant who provides services to  
16 a consumer.

17 "Consumer" means a natural person who has a pending legal  
18 claim and who (1) resides or is domiciled in Illinois or (2)  
19 has a legal claim in Illinois.

20 "Funded amount" means the amount of moneys provided to or  
21 on behalf of the consumer in the civil justice funding.

22 "Funded amount" does not include charges.

23 "Funding date" means the date on which the funded amount is  
24 transferred to the consumer by the civil justice funding  
25 company either by personal delivery or via wire, ACH, or other  
26 electronic means or mailed by insured, certified, or registered

1 United States mail.

2 "Immediate family member" means a parent; sibling; child by  
3 blood, adoption, or marriage; spouse; grandparent or  
4 grandchild.

5 "Legal claim" means a bona fide civil claim or cause of  
6 action.

7 "Resolution date" means the date the amount funded to the  
8 consumer, plus the agreed upon charges, are delivered to the  
9 civil justice funding company.

10 Section 10. Contract requirements; right of rescission.

11 (a) All civil justice fundings shall meet the following  
12 requirements:

13 (1) the contract shall be completely filled in when  
14 presented to the consumer for signature;

15 (2) the contract shall contain, in bold and boxed type,  
16 a right of rescission, allowing the consumer to cancel the  
17 contract without penalty or further obligation if, within 5  
18 business days after the funding date, the consumer either:

19 (A) returns to the civil justice funding company  
20 the full amount of the disbursed funds by delivering  
21 the company's uncashed check to the company's office in  
22 person; or

23 (B) mails, by insured, certified, or registered  
24 United States mail, to the address specified in the  
25 contract, a notice of cancellation and includes in such

1 mailing a return of the full amount of disbursed funds  
2 in the form of the company's uncashed check or a  
3 registered or certified check or money order; and  
4 (3) the contract shall contain the initials of the  
5 consumer on each page.

6 (b) The contract shall contain a written acknowledgment by  
7 the attorney retained by the consumer in the legal claim that  
8 attests to the following: (1) to the best of the attorney's  
9 knowledge, all the costs and charges relating to the civil  
10 justice funding have been disclosed to the consumer; (2) the  
11 attorney is being paid on a contingency basis pursuant to a  
12 written fee agreement; (3) all proceeds of the legal claim will  
13 be disbursed via either the trust account of the attorney or a  
14 settlement fund established to receive the proceeds of the  
15 legal claim on behalf of the consumer; (4) the attorney is  
16 following the written instructions of the consumer with regard  
17 to the civil justice funding; and (5) the attorney has not  
18 received a referral fee or other consideration from the civil  
19 justice funding company in connection with the civil justice  
20 funding, nor will the attorney receive such fee or other  
21 consideration in the future.

22 (c) If the acknowledgment required in subsection (b) of  
23 this Section is not be completed by the attorney retained the  
24 consumer in the legal claim, the contract shall be null and  
25 void. The contract remains valid and enforceable if the  
26 consumer terminates the initial attorney or retains a new

1 attorney with respect to the legal claim.

2 Section 15. Civil justice funding company prohibitions. A  
3 civil justice funding company shall not:

4 (1) pay or offer to pay commissions, referral fees, or  
5 other forms of consideration to any attorney, law firm,  
6 medical provider, chiropractor, physical therapist, or any  
7 of their employees for referring a consumer to the company;

8 (2) accept any commissions, referral fees, rebates, or  
9 other forms of consideration from an attorney, law firm,  
10 medical provider, chiropractor, physical therapist, or any  
11 of their employees;

12 (3) intentionally advertise materially false or  
13 misleading information regarding its products or services;

14 (4) refer, in furtherance of an initial legal funding,  
15 a customer or potential customer to a specific attorney,  
16 law firm, medical provider, chiropractor, physical  
17 therapist, or any of their employees; however, if a  
18 customer needs legal representation, the company may refer  
19 the customer to a local or state bar association referral  
20 service;

21 (5) fail to promptly supply a copy of the executed  
22 contract to the attorney for the consumer;

23 (6) knowingly provide funding to a consumer who has  
24 previously assigned or sold a portion of the consumer's  
25 right to proceeds from his or her legal claim without first

1 making payment to or purchasing a prior unsatisfied civil  
2 justice funding company's entire funded amount and  
3 contracted charges, unless a lesser amount is otherwise  
4 agreed to in writing by the civil justice funding  
5 companies, except that multiple companies may agree to  
6 contemporaneously provide funding to a consumer provided  
7 that the consumer and the consumer's attorney consent to  
8 the arrangement in writing;

9 (7) receive any right to or make any decisions with  
10 respect to the conduct of the underlying legal claim or any  
11 settlement or resolution thereof; the right to make such  
12 decisions shall remain solely with the consumer and the  
13 attorney in the legal claim; or

14 (8) knowingly pay or offer to pay for court costs,  
15 filing fees, or attorneys' fees, either during or after the  
16 resolution of the legal claim, using funds from the civil  
17 justice funding transaction.

18 Section 20. Contracted amounts. A civil justice funding  
19 company shall require the contracted amount to be paid to the  
20 company to be set as a predetermined amount based upon  
21 intervals of time from the funding date through the resolution  
22 date, and not be determined as a percentage of the recovery  
23 from the legal claim.

24 Section 25. Fees.

1           (a) If the consumer elects to make monthly payments to the  
2 civil justice funding company, the funding fee charged by the  
3 civil justice funding company shall not exceed 36% of the  
4 funded amount in a 12-month period, and the consumer shall make  
5 monthly payments to the civil justice funding company.

6           (b) If the consumer elects to not make monthly payments or  
7 defer payment to the civil justice legal funding company, the  
8 funding fee charged by the civil justice funding company shall  
9 not exceed 36% of the funded amount in a 12-month period, and  
10 in addition to this fee, the civil justice funding company may  
11 charge a deferral fee of up to 3% of the funded amount per  
12 month.

13           (c) In addition to the funding and deferral fees set forth  
14 in subsections (a) and (b), a civil justice funding company  
15 shall also collect a one-time fee of \$500 in each civil justice  
16 funding to defray the ordinary costs of opening, administering,  
17 and terminating a civil justice funding, and the civil justice  
18 funding company may assess a fee for the expedited delivery of  
19 funds, provided that the civil justice funding company shall  
20 offer the consumer a free delivery option.

21           Section 30. Disclosures.

22           (a) All civil justice funding contracts shall contain the  
23 disclosures specified in this Section, which shall constitute  
24 material terms of the contract. Unless otherwise specified, the  
25 disclosures shall be typed in at least 12-point bold type font



1 and be placed clearly and conspicuously within the contract, as  
2 follows:

3 (1) On the front page under appropriate headings,  
4 language specifying:

5 (A) the funded amount to be paid to the consumer by  
6 the civil justice funding company;

7 (B) an itemization of one-time charges;

8 (C) the total amount to be assigned by the consumer  
9 to the company, including the funded amount and all  
10 charges; and

11 (D) a payment schedule to include the funded amount  
12 and charges, listing all dates and the amount due at  
13 the end of each 180-day period from the funding date,  
14 until the date the maximum amount due to the company by  
15 the consumer to satisfy the amount due pursuant to the  
16 contract.

17 (2) Pursuant to the provisions set forth in paragraph  
18 (2) of subsection (a) of Section 10, within the body of the  
19 contract: "Consumer's Right to Cancellation: You may  
20 cancel this contract without penalty or further obligation  
21 within 5 business days after the funding date if you  
22 either:

23 (A) return to the civil justice funding company the  
24 full amount of the disbursed funds by delivering the  
25 company's uncashed check to the company's office in  
26 person; or

1 (B) mail, by insured, certified, or registered  
2 United States mail, to the company at the address  
3 specified in the contract, a notice of cancellation and  
4 include in such mailing a return of the full amount of  
5 disbursed funds in the form of the company's uncashed  
6 check or a registered or certified check or money  
7 order.".

8 (3) The civil justice funding company shall have no  
9 role in deciding whether, when, and how much the legal  
10 claim is settled for; however, the consumer and consumer's  
11 attorney must notify the company of the outcome of the  
12 legal claim by settlement or adjudication prior to the  
13 resolution date. The company may seek updated information  
14 about the status of the legal claim, but in no event shall  
15 the company interfere with the independent professional  
16 judgment of the attorney in the handling of the legal claim  
17 or any settlement thereof.

18 (4) Within the body of the contract, in all capital  
19 letters in at least 12-point bold type font contained  
20 within a box: "THE FUNDED AMOUNT AND AGREED UPON CHARGES  
21 SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM,  
22 AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE  
23 AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE  
24 [ INSERT NAME OF THE CIVIL JUSTICE FUNDING COMPANY] ANYTHING  
25 IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU  
26 OR YOUR ATTORNEY HAVE VIOLATED ANY MATERIAL TERM OF THIS

1 CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST THE CIVIL  
2 JUSTICE FUNDING COMPANY.".

3 (5) Located immediately above the place on the contract  
4 where the consumer's signature is required, in 12-point  
5 font: "Do not sign this contract before you read it  
6 completely or if it contains any blank spaces. You are  
7 entitled to a completely filled-in copy of the contract.  
8 Before you sign this contract, you should obtain the advice  
9 of an attorney. Depending on the circumstances, you may  
10 want to consult a tax, public or private benefits planning,  
11 or financial professional. You acknowledge that your  
12 attorney in the legal claim has provided no tax, public or  
13 private benefit planning, or financial advice regarding  
14 this transaction.".

15 Section 35. Violations.

16 (a) Nothing in this Act shall be construed to restrict the  
17 exercise of powers or the performance of the duties of the  
18 Attorney General that he or she is authorized to exercise or  
19 perform by law.

20 (b) If a court of competent jurisdiction determines that a  
21 civil justice funding company has intentionally violated the  
22 provisions of this statute with regard to a specific civil  
23 justice funding, the civil justice funding company shall only  
24 be entitled to recover the funded amount provided to the  
25 consumer in such specific civil justice funding and shall not

1 be entitled to any additional charges.

2 Section 40. Assignability; liens.

3 (a) The contingent right to receive an amount of the  
4 potential proceeds of a legal claim is assignable by a  
5 consumer.

6 (b) Nothing contained in this Act shall be construed to  
7 cause any civil justice funding transaction conforming to this  
8 Act to be deemed a loan or to be subject to any of the  
9 provisions governing loans contained in this Act. A civil  
10 justice funding transaction that complies with this Act is not  
11 subject to any other statutory or regulatory provisions  
12 governing loans or investment contracts, except as provided by  
13 federal law. To the extent that this Act conflicts with any  
14 other law, this Act supersedes the other law for the purposes  
15 of regulating civil justice fundings in Illinois.

16 (c) Only attorney's liens related to the legal claim or  
17 Medicare or other statutory liens related to the legal claim  
18 shall take priority over any lien of the civil justice funding  
19 company. All other liens shall take priority by normal  
20 operation of law.

21 Section 45. Attorney prohibitions. An attorney or law firm  
22 retained by the consumer in the legal claim shall not have a  
23 financial interest in the civil justice funding company  
24 offering civil justice funding to that consumer. Additionally,

1 any attorney who has referred the consumer to his or her  
2 retained attorney shall not have a financial interest in the  
3 civil justice funding company offering civil justice funding to  
4 that consumer.

5 Section 50. Effect of communication on privileges. No  
6 communication between the consumer's attorney in the legal  
7 claim and the civil justice funding company as it pertains to  
8 the civil justice funding shall limit, waive, or abrogate the  
9 scope or nature of any statutory or common-law privilege,  
10 including the work-product doctrine and the attorney-client  
11 privilege.

12 Section 55. Registration; forms.

13 (a) Unless a civil justice funding company has first  
14 registered under this Act, the company may not engage in the  
15 business of civil justice funding in this State.

16 (b) An applicant's registration must be filed in the manner  
17 prescribed by the Department of Financial and Professional  
18 Regulation and must contain the information the Department  
19 requires to make an evaluation of the character and fitness of  
20 the applicant company. The initial application must be  
21 accompanied by a \$250 fee. A renewal registration must include  
22 a \$200 fee. A registration must be renewed every 2 years and  
23 expires on September 30th.

24 (c) A certificate of registration may not be issued unless

1 the Department of Financial and Professional Regulation, upon  
2 investigation, finds that the character and fitness of the  
3 applicant company, and of the officers and directors thereof,  
4 are such as to warrant belief that the business will be  
5 operated honestly and fairly within the purposes of this Act.

6 (d) Every registrant shall also, at the time of filing such  
7 application, file with the Department of Financial and  
8 Professional Regulation, if the Department so requires, a bond  
9 satisfactory to the Department of Financial and Professional  
10 Regulation in an amount not to exceed \$50,000. In lieu of the  
11 bond at the option of the registrant, the registrant may post  
12 an irrevocable letter of credit. The terms of the bond must run  
13 concurrent with the period of time during which the  
14 registration will be in effect. The bond must provide that the  
15 registrant will faithfully conform to and abide by the  
16 provisions of this Act and to all rules lawfully made by the  
17 Department under this Act and to any such person or persons any  
18 and all amounts of money that may become due or owing to the  
19 State or to such person or persons from the registrant under  
20 and by virtue of this Act during the period for which the bond  
21 is given.

22 (e) Upon written request, the applicant is entitled to a  
23 hearing on the question of the applicant's qualifications for a  
24 registration if:

- 25 (1) the Department of Financial and Professional  
26 Regulation has notified the applicant in writing that the

1 application has been denied; or

2 (2) the Department of Financial and Professional  
3 Regulation has not issued a registration within 60 days  
4 after the application for the registration was filed.

5 A request for a hearing may not be made more than 30 days  
6 after the Department of Financial and Professional Regulation  
7 has mailed a written notice to the applicant that the  
8 application has been denied and stating in substance the  
9 Department's findings supporting denial of the application.

10 (f) Notwithstanding the prior approval requirement of  
11 subsection (a) of this Section, a civil justice funding company  
12 that registered with the Department of Financial and  
13 Professional Regulation between the effective date of this Act  
14 and December 31, 2016 may engage in civil justice funding while  
15 the company's registration is awaiting approval by the  
16 Department. All funding agreements prior to the effective date  
17 of this Act are not subject to the terms of this Act.

18 Section 60. Preexisting fundings. Nothing in this Act shall  
19 in any way affect or invalidate any civil justice fundings  
20 previously effectuated prior to the effective date of this Act.

21 Section 97. Severability. The provisions of this Act are  
22 severable under Section 1.31 of the Statute on Statutes.

23 Section 99. Effective date. This Act takes effect July 1,  
24 2015.