

SECOND REGULAR SESSION

HOUSE BILL NO. 1705

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HAAHR.

5127H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 436, RSMo, by adding thereto ten new sections relating to the civil litigation funding act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 436, RSMo, is amended by adding thereto ten new sections, to be
2 known as sections 436.550, 436.552, 436.554, 436.556, 436.558, 436.560, 436.562, 436.566,
3 436.568, and 436.570, to read as follows:

**436.550. Sections 436.550 to 436.570 shall be known and may be cited as the “Civil
2 Litigation Funding Act”.**

436.552. 1. As used in sections 436.550 to 436.570, the following terms mean:

2 (1) “Advertise”, publishing or disseminating any written, electronic, or printed
3 communication or any communication by means of recorded telephone messages or
4 transmitted on radio, television, the internet, or similar communications media including
5 film strips, motion pictures, and videos published, disseminated, circulated, or placed
6 before the public, directly or indirectly, for the purpose of inducing a consumer to enter
7 into a civil litigation funding;

8 (2) “Charges”, the amount of money to be paid to the civil litigation funding
9 company by or on behalf of the consumer, above the funded amount provided by or on
10 behalf of the company to a Missouri consumer under this act. Charges include all
11 administrative, origination, underwriting, and other fees, no matter how denominated;

12 (3) “Civil litigation funding”, a nonrecourse transaction in which a civil litigation
13 funding company purchases and a consumer assigns to the company a contingent right to

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 receive an amount of the potential proceeds of a settlement, judgment, award, or verdict
15 obtained in the consumer's legal claim;

16 (4) "Civil litigation funding company" or "company", a person or entity that enters
17 into a civil litigation funding arrangement with a Missouri consumer. This term shall not
18 include:

19 (a) An immediate family member of the consumer;

20 (b) A bank, lender, financing entity, or other special purpose entity:

21 a. That provides financing to a civil litigation funding company; or

22 b. To which a civil litigation funding company grants a security interest or
23 transfers any rights or interest in a civil litigation funding arrangement; or

24 (c) An attorney or accountant who provides services to a consumer;

25 (5) "Consumer", a natural person who has a pending legal claim, and:

26 (a) The person resides or is domiciled in Missouri; or

27 (b) The legal claim arose in Missouri;

28 (6) "Funded amount", the amount of moneys provided to or on behalf of the
29 consumer in the civil litigation funding transaction;

30 (7) "Funding date", the date on which the funded amount is transferred to the
31 consumer by the civil litigation funding company either by personal delivery or via wire,
32 ACH, or other electronic means or mailed by insured, certified, or registered United States
33 mail;

34 (8) "Immediate family member", a parent; sibling; child by blood, adoption, or
35 marriage; spouse; grandparent; or grandchild;

36 (9) "Legal claim", a bona fide civil claim or cause of action, any alternative dispute
37 resolution proceeding, or any administrative proceeding before any agency or
38 instrumentality of this state;

39 (10) "Resolution date", the date the amount funded to the consumer plus the agreed
40 upon charges are delivered to the civil litigation funding company.

436.554. 1. All civil litigation transactions shall be covered by contracts between
2 the civil litigation funding company and the consumer. All such contracts shall meet the
3 following requirements:

4 (1) The contract shall be completely filled in when presented to the consumer for
5 signature;

6 (2) The contract shall contain, in bold and boxed type, a right of rescission allowing
7 the consumer to cancel the contract without penalty or further obligation if, within five
8 business days after the funding date, the consumer either:

9 **(a) Returns to the civil litigation funding company the full amount of the disbursed**
10 **funds by delivering the company's uncashed check to the company's office in person; or**

11 **(b) Mails, by insured, certified, or registered United States mail, to the address**
12 **specified in the contract, a notice of cancellation and includes in such mailing a return of**
13 **the full amount of disbursed funds in the form of the company's uncashed check or a**
14 **registered or certified check or money order;**

15 **(3) The contract shall contain the initials of the consumer on each page; and**

16 **(4) The contract shall require the consumer to give nonrevocable written direction**
17 **to his or her attorney requiring the attorney to notify the civil litigation funding company**
18 **when the legal claim has been resolved. Once the civil litigation funding company confirms**
19 **in writing the amount due under the contract, the consumer's attorney shall pay the civil**
20 **litigation funding company from the proceeds of the resolution of the legal claim the**
21 **amount due within ten business days.**

22 **2. The civil litigation funding company shall provide the consumer's attorney with**
23 **a written notification of the civil litigation funding provided to the consumer within three**
24 **business days of the funding date by way of postal mail, courier service, facsimile, or**
25 **electronic means.**

436.556. A civil litigation funding company shall not:

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

5 **(2) Accept any commissions, referral fees, rebates, or other forms of consideration**
6 **from an attorney, law firm, medical provider, chiropractor, or physical therapist or any**
7 **of their employees;**

8 **(3) Advertise materially false or misleading information regarding its products or**
9 **services;**

10 **(4) Refer, in furtherance of an initial litigation funding, a customer or potential**
11 **customer to a specific attorney, law firm, medical provider, chiropractor, or physical**
12 **therapist or any of their employees. However, if a customer needs legal representation, the**
13 **company may refer the customer to a local or state bar association referral service;**

14 **(5) Fail to promptly supply a copy of the executed contract to the attorney for the**
15 **consumer;**

16 **(6) Knowingly provide funding to a consumer who has previously assigned or sold**
17 **a portion of the consumer's right to proceeds from his or her legal claim without first**
18 **making payment to or purchasing a prior unsatisfied civil litigation funding company's**
19 **entire funded amount and contracted charges unless a lesser amount is otherwise agreed**

20 to in writing by the civil litigation funding companies. However, multiple companies may
21 agree to contemporaneously provide funding to a consumer, provided that the consumer
22 and the consumer's attorney consent to the arrangement in writing;

23 (7) Receive any right to or make any decisions with respect to the conduct of the
24 underlying legal claim or any settlement or resolution thereof. The right to make such
25 decisions shall remain solely with the consumer and the attorney in the legal claim; or

26 (8) Pay or offer to pay for court costs, filing fees, or attorneys' fees either during
27 or after the resolution of the legal claim using funds from the civil litigation funding
28 transaction.

436.558. 1. A civil litigation funding company shall require the contracted amount
2 to be paid to the company to be set as a predetermined amount based upon intervals of
3 time from the funding date through the resolution date and not be determined as a
4 percentage of the recovery from the legal claim.

5 2. In no event shall the charges a civil litigation funding company imposes be
6 greater than twenty-one percent of the funded amount annually.

7 3. All civil litigation funding agreements shall stop accruing fees and interest thirty
8 months after the funding date such that the outstanding balance of any civil litigation
9 funding contract on such date shall constitute a cap on the loan and all fees accrued. No
10 civil litigation funding contract shall incorporate outstanding funds, in whole or in part,
11 from a previous civil litigation funding contract into a new civil litigation funding contract.

436.560. All civil litigation funding contracts shall contain the disclosures specified
2 in this section, which shall constitute material terms of the contract. Unless otherwise
3 specified, the disclosures shall be typed in at least twelve-point bold-type font and be placed
4 clearly and conspicuously within the contract, as follows:

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

6 (a) The funded amount to be paid to the consumer by the civil litigation funding
7 company;

8 (b) An itemization of one-time charges;

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

11 (d) A payment schedule to include the funded amount and charges, listing all dates
12 and the amount due at the end of each one hundred eighty-day period from the funding
13 date, until the date the maximum amount due to the company by the consumer to satisfy
14 the amount due pursuant to the contract;

15 (2) In accordance with the provisions set forth under subdivision (2) of subsection
16 1 of section 436.554, within the body of the contract: "Consumer's Right to Cancellation:

17 **You may cancel this contract without penalty or further obligation within five business**
18 **days after the funding date if you either:**

19 **(a) Return to the civil litigation funding company the full amount of the disbursed**
20 **funds by delivering the company’s uncashed check to the company’s office in person; or**

21 **(b) Mail, by insured, certified, or registered United States mail, to the company at**
22 **the address specified in the contract, a notice of cancellation and include in such mailing**
23 **a return of the full amount of disbursed funds in the form of the company’s uncashed**
24 **check or a registered or certified check or money order.”;**

25 **(3) Within the body of the contract, language specifying:**

26 **(a) The civil litigation funding company shall have no role in deciding whether,**
27 **when, or for how much the legal claim is settled;**

28 **(b) The consumer and consumer’s attorney shall notify the company of whether the**
29 **outcome of the legal claim will be by settlement or by adjudication prior to the resolution**
30 **date; and**

31 **(c) The company may seek updated information about the status of the legal claim,**
32 **but in no event shall the company interfere with the independent professional judgment**
33 **of the attorney in the handling of the legal claim or any settlement thereof;**

34 **(4) Within the body of the contract, in all capital letters in at least twelve-point**
35 **bold-type font contained within a box: ”THE FUNDED AMOUNT AND AGREED UPON**
36 **CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL**
37 **CLAIM, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE**
38 **AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE**
39 **(INSERT NAME OF THE CIVIL LITIGATION FUNDING COMPANY) ANYTHING**
40 **IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM UNLESS YOU OR**
41 **YOUR ATTORNEY HAS VIOLATED ANY MATERIAL TERM OF THIS CONTRACT**
42 **OR YOU HAVE COMMITTED FRAUD AGAINST THE CIVIL LITIGATION**
43 **FUNDING COMPANY.”; and**

44 **(5) Located immediately above the place on the contract where the consumer’s**
45 **signature is required, in twelve-point font: “Do not sign this contract before you read it**
46 **completely or if it contains any blank spaces. You are entitled to a completely filled-in copy**
47 **of the contract. Before you sign this contract, you should obtain the advice of an attorney.**
48 **Depending on the circumstances, you may want to consult a tax, public or private benefits**
49 **planning, or financial professional. You acknowledge that your attorney in the legal claim**
50 **has provided no tax, public or private benefits planning, or financial advice regarding this**
51 **transaction.”.**

436.562. 1. Nothing in this act shall be construed to restrict the exercise of powers or the performance of the duties of the state attorney general, which he or she is authorized to exercise or perform by law.

2. If a court of competent jurisdiction determines that a civil litigation funding company has intentionally violated the provisions of this statute with regard to a specific civil litigation funding, the civil litigation funding company shall be entitled to recover only the funded amount provided to the consumer in such specific civil litigation funding and shall not be entitled to any additional charges.

436.566. No attorney or law firm retained by the consumer in the legal claim shall have a financial interest in the civil litigation funding company offering civil litigation funding to that consumer. Additionally, no attorney who referred the consumer to his or her retained attorney shall have a financial interest in the civil litigation funding company offering civil litigation funding to that consumer.

436.568. No communication between the consumer's attorney in the legal claim and the civil litigation funding company as it pertains to the civil litigation funding shall limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

436.570. 1. No civil litigation funding company shall engage in the business of civil litigation funding in this state unless the company has first registered under this act.

2. An applicant's registration shall be filed in the manner prescribed by the department of insurance, financial institutions and professional registration and shall contain the information the department requires to make an evaluation of the character and fitness of the applicant company. The initial application shall be accompanied by a five hundred dollar fee. A renewal registration shall include a two hundred dollar fee. A registration shall be renewed every two years and expires on September thirtieth.

3. No certificate of registration shall be issued unless the department of insurance, financial institutions and professional registration, upon investigation, finds that the character and fitness of the applicant company, and of the officers and directors thereof, are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this act.

4. Every registrant shall also, at the time of filing such application, file with the department of insurance, financial institutions and professional registration, if the department so requires, a bond satisfactory to the department in an amount not to exceed fifty thousand dollars. In lieu of the bond, at the option of the registrant, the registrant may post an irrevocable letter of credit. The terms of the bond shall run concurrent with the period of time during which the registration will be in effect. The bond shall provide

20 that the registrant will faithfully conform to and abide by the provisions of this act and to
21 all rules lawfully made by the administrator under this act and to any such person or
22 persons any and all amounts of money that may become due or owing to the state or to
23 such person or persons from the registrant under and by virtue of this act during the
24 period for which the bond is given.

25 5. Upon written request, the applicant is entitled to a hearing on the question of the
26 applicant's qualifications for a registration if:

27 (1) The department of insurance, financial institutions and professional registration
28 has notified the applicant in writing that the application has been denied, or

29 (2) The department has not issued a registration within sixty days of the date the
30 application for the registration was filed.

31

32 A request for a hearing shall not be made more than fifteen days after the department has
33 mailed a written notice to the applicant that the application has been denied and that states
34 in substance the department's findings in support of denial of the application.

35 6. Notwithstanding the prior approval requirement under subsection 1 of this
36 section, a civil litigation funding company that registered with the department of
37 insurance, financial institutions and professional registration between the effective date of
38 this act and six months thereafter may engage in civil litigation funding while the
39 company's registration is awaiting approval by the department. All funding agreements
40 prior to the effective date of this act are not subject to the terms of this act.

41 7. No civil litigation funding company shall use any form of civil litigation funding
42 contract in this state unless it has been filed with the department of insurance, financial
43 institutions and professional registration in accordance with the filing procedures set forth
44 by the department.

45 8. The department of insurance, financial institutions and professional registration
46 shall have the authority to enforce the provisions of this act and to promulgate rules and
47 regulations to implement the provisions of this act. Any rule or portion of a rule, as that
48 term is defined in section 536.010, that is created under the authority delegated in this
49 section shall become effective only if it complies with and is subject to all of the provisions
50 of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
51 nonseverable, and if any of the powers vested with the general assembly pursuant to
52 chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are
53 subsequently held unconstitutional, then the grant of rulemaking authority and any rule
54 proposed or adopted after August 28, 2016, shall be invalid and void.

✓