



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3169

Introduced 2/11/2014, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

New Act

5 ILCS 80/4.25

205 ILCS 670/21

815 ILCS 505/2Z

from Ch. 17, par. 5427

from Ch. 121 1/2, par. 262Z

Creates the Non-Recourse Civil Litigation Funding Act. Provides that all contracts for non-recourse civil litigation 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, Medicare lien, Medicaid lien, or health care provider lien takes priority over any lien of the non-recourse civil litigation funding company. Contains a provision concerning standards and practices of non-recourse civil litigation companies. Provides criteria for non-recourse civil litigation funding companies to receive and retain licenses, the closing of its business or surrendering of the license, and prohibited acts. Contains provisions for enforcement and remedies, rulemaking, bonding, and judicial review. Amends the Regulatory Sunset Act to provide the Non-Recourse Civil Litigation Funding Act to expire on May 31, 2015. Amends the Consumer Installment Loan Act provision concerning the application of the Act to exclude non-recourse civil litigation funding if requested. Amends the Consumer Fraud and Deceptive Business Practices Act to provide that a person who knowingly violates the Non-Recourse Civil Litigation Funding Act commits an unlawful practice. Effective 180 days after becoming law.

LRB098 19406 ZMM 54564 b

1 AN ACT concerning business.

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

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

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

7 "Civil litigation funding company" means a person or entity
8 that enters into a non-recourse civil litigation funding
9 transaction with a consumer. "Civil litigation funding
10 company" includes any affiliate or subsidiary of a civil
11 litigation funding company; an entity or person who buys a
12 whole or partial interest in a non-recourse civil litigation
13 funding, acts as an agent to provide a non-recourse civil
14 litigation funding from a third party for a fee, or acts as an
15 agent for a third party in providing a non-recourse civil
16 litigation funding for a fee, regardless of whether approval or
17 acceptance by the third party is necessary to create a legal
18 obligation for the third party; and any other person or entity
19 if the Department determines that the person or entity is
20 engaged in a transaction that is in substance a disguised
21 non-recourse civil litigation funding or a subterfuge for the
22 purpose of avoiding this Act. Notwithstanding anything to the
23 contrary contained in this Act, a bank, lender, financing

1 entity, or any other special purpose entity that provides
2 financing to a civil litigation funding company or to which a
3 civil litigation funding company grants a security interest or
4 transfers any rights or interest in a non-recourse civil
5 litigation funding shall not cause the bank, lender, financing
6 entity, or special purpose entity to be deemed a civil
7 litigation funding company. Notwithstanding anything to the
8 contrary contained in this Act, an attorney or accountant who
9 provides services to a consumer shall not be deemed a civil
10 litigation funding company.

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

18 "Contract" means a written agreement between a consumer and
19 a civil litigation funding company that the civil litigation
20 funding company agrees to provide non-recourse civil
21 litigation funding to the consumer in compliance with Article
22 2.

23 "Department" means the Illinois Department of Financial
24 and Professional Regulation.

25 "Funding amount" means the dollar amount of funds provided
26 to the consumer by the non-recourse civil litigation funding

1 company subsequent to the execution of the contract as
2 consideration for the assignment of or purchase of a contingent
3 right to receive a portion of the proceeds of the legal claim.

4 "Funding date" means the date on which the funding amount
5 is paid to the consumer by the civil litigation funding
6 company.

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

8 "Licensee" means any civil litigation funding company
9 licensed in accordance with Article 3.

10 "Non-recourse civil litigation funding" means a
11 transaction of any amount in which a civil litigation funding
12 company purchases and a consumer assigns to the civil
13 litigation funding company the contingent right to receive a
14 portion of the potential proceeds of a settlement, judgment,
15 award, or verdict obtained in the consumer's legal claim.

16 "Proceeds" means those funds available for payment to the
17 civil litigation funding company that are remaining from any
18 settlement, verdict, final judgment, insurance payment, or
19 award obtained in the consumer's legal claim after reductions
20 are made under Section 2-15 of this Act.

21 "Resolution date" means the date the funding amount plus
22 the agreed upon fees from the legal claim are received by the
23 civil litigation funding company.

24 "Secretary" means the Illinois Secretary of Financial and
25 Professional Regulation.

1 Article 2. Non-Recourse Civil Litigation Funding

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

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

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

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

10 (C) the total dollar amount of the proceeds assigned by
11 the consumer to the civil litigation funding company, set
12 forth up to 1080 days beginning at the 11th business day
13 after the funding date, then at 31 days after the funding
14 date, 61 days after the funding date, 181 days after the
15 funding date, 361 days after the funding date, and 721 days
16 after the funding date; and

17 (D) a calculation of the annual percentage fee for each
18 180-day interval.

19 The Secretary shall prescribe by rule the format of the
20 chart that clearly discloses to the consumer all the
21 information in this subsection. Until the Secretary makes such
22 a rule, each civil litigation funding company must have a chart
23 format approved for distribution by the Secretary.

24 No contract for non-recourse civil litigation funding
25 shall be enforceable against the consumer unless it complies

1 entirely with this subsection.

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

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

10 The contract must also specify that in order for the
11 cancellation to be effective, the consumer must either return
12 to the civil litigation funding company the total amount of the
13 funding amount by (a) delivering the civil litigation funding
14 company's uncashed check to the civil litigation company's
15 offices in person within 10 business days after receipt of the
16 funding amount, (b) sending a notice of cancellation via
17 registered or certified mail and include in the mailing a
18 return of the total amount of funding amount in the form of the
19 civil litigation funding company's uncashed check within 10
20 business days after receipt of the funding amount, or (c)
21 sending a registered, certified or cashier's check or money
22 order, by insured, registered, or certified United States mail,
23 postmarked within 10 business days after receipt of the funding
24 amount, to the address specified in the contract for
25 cancellation.

26 (3) The contract shall contain all of the following

1 statements in at least 12-point, bold face type:

2 "(A) [Insert name of the civil litigation funding
3 company] agrees that it shall have no right to and will not
4 make any decisions with respect to the conduct of the legal
5 claim or any settlement or resolution thereof and that the
6 right to make those decisions remains solely with you and
7 your attorney in the legal claim. [Insert name of the civil
8 litigation funding company] further agrees that it shall
9 have no right to pursue the legal claim on your behalf.

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

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

25 (4) All contracts with the consumer must contain the
26 following statement, in plain language in a box with 15-point,

1 bold face type, in all capitalized letters, stating the
2 following:

3 "THE FUNDING AMOUNT AND AGREED UPON FEES SHALL ONLY BE PAID
4 FROM THE PROCEEDS OF YOUR LEGAL CLAIM AND SHALL ONLY BE
5 PAID TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM
6 YOUR LEGAL CLAIM. YOU WILL NOT OWE [INSERT NAME OF THE
7 CIVIL LITIGATION FUNDING COMPANY] ANYTHING IF THERE ARE NO
8 PROCEEDS FROM YOUR LEGAL CLAIM."

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

12 "Do not sign this Agreement before you read it completely
13 or if it contains any blank spaces. You are entitled to a
14 completely filled-in copy of this Agreement. Before you
15 sign this Agreement you should obtain the advice of an
16 attorney. Depending on the circumstances, you may want to
17 consult a tax, public, or private benefit planning or
18 financial professional. You acknowledge that your attorney
19 in the legal claim has provided no tax, public, or private
20 benefit planning regarding this transaction. You further
21 understand and agree that the funds you receive from
22 [insert name of the civil litigation funding company] shall
23 not be used to pay for or applied to the payment of
24 attorney's fees or litigation costs related to your legal
25 claim."

26 (6) The executed contract shall contain a written

1 acknowledgment by the consumer that he or she has reviewed the
2 contract in its entirety.

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

15 (8) The contracted return of the funding amount, plus any
16 agreed upon fees assigned to the civil litigation funding
17 company on the resolution date shall not be determined as a
18 percentage of the recovery from the legal claim but shall be
19 set as a contractually determined amount based upon intervals
20 of time from the funding date through the resolution date.

21 Section 2-10. Contracted fee amount.

22 (a) The civil litigation funding company shall offer the
23 consumer the option of either entering into a conventional loan
24 under the Consumer Installment Loan Act or entering into a
25 non-recourse civil litigation funding.

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

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

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

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

15 Section 2-12. Charges permitted.

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

18 (b) A licensee may charge an expedited funds delivery
19 option charge not to exceed the actual cost of delivery or \$20,
20 whichever is less. Expedited funds delivery options,
21 including, but not limited to, overnight delivery, electronic
22 fund transfers, and Automated Clearing House (ACH)
23 transactions may be offered to the consumer as a choice of the
24 method of the delivery of funds. The fund delivery charge is
25 fully earned at the time that each funding transaction is made

1 and shall not be subject to refund. Details and receipts of
2 delivery shall be provided in an invoice to the consumer no
3 more than 10 business days after the funding date. A no-charge
4 delivery option must be offered to the consumer as a choice.

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

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

17 (1) The civil litigation funding company shall not pay or
18 offer to pay any compensation to any attorney, law firm,
19 medical provider, chiropractor, physical therapist, or any of
20 their employees for referring a consumer to the civil
21 litigation funding company. The civil litigation funding
22 company agrees not to accept any compensation from any
23 attorney, law firm, medical provider, chiropractor, physical
24 therapist, or any of their employees, other than the funding

1 amount and any agreed upon fees the consumer assigned to the
2 civil litigation funding company out of the potential proceeds
3 of the legal claim. If a lawyer or law firm represents one or
4 more consumers with outstanding civil litigation fundings from
5 the same civil litigation funding company, that civil
6 litigation funding company may not provide any type of funding
7 to the lawyer or law firm.

8 (2) The civil litigation funding company shall not
9 advertise false or intentionally misleading information
10 regarding its product or services.

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

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

24 (5) For non-English speaking consumers, the principal
25 terms of the contract must be translated in writing into the
26 consumer's primary language. The consumer must sign the

1 translated document containing the principal terms and initial
2 each page and the translator must sign an affirmation
3 confirming that the principal terms have been presented to the
4 consumer in the consumer's primary language and acknowledged by
5 the consumer. Principal terms shall include all items that must
6 be disclosed by Section 2-5.

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

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

1 (8) No communication between a consumer's attorney and a
2 civil litigation funding company pertaining to a consumer's
3 non-recourse civil litigation funding transaction shall limit,
4 waive, or abrogate any statutory or common-law privilege,
5 including the attorney-client privilege or the work-product
6 doctrine.

7 (9) The return of the funding amount to the civil
8 litigation funding company, plus any agreed upon fees, shall be
9 rendered only out of the proceeds, if any, of the realized
10 settlement, judgment, award, or verdict the consumer may
11 receive from the legal claim. Under no circumstances shall the
12 civil litigation funding company have recourse for the funding
13 amount beyond the consumer's proceeds from the legal claim.

14 (10) The civil litigation funding company shall have no
15 authority to make any decisions with respect to the conduct of
16 the litigation of the legal claim or any settlement or
17 resolution thereof. The right to make those decisions remains
18 solely with the consumer and the consumer's attorney
19 representing the consumer in the legal claim. The civil
20 litigation funding company shall have no right to pursue the
21 legal claim on the consumer's behalf.

22 (11) The civil litigation funding company shall only accept
23 an assignment of a contingent right to receive a portion of the
24 potential proceeds, rather than an assignment of the legal
25 claim. The contracted return of the funding amount, plus any
26 agreed upon fees assigned to the civil litigation funding

1 company, shall not be determined as a percentage of the total
2 recovery from the legal claim, but shall be set as a
3 contractually determined amount based upon intervals of time
4 from the funding date through the resolution date.

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

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

11 (A) Neither a civil litigation funding company, nor any
12 person acting on behalf of a civil litigation funding
13 company, shall contact a consumer prior to the consumer
14 obtaining legal representation and initiating a legal
15 claim.

16 (B) Neither a civil litigation funding company, nor any
17 person acting on behalf of a civil litigation funding
18 company, shall contact the consumer after the funding date
19 in order to influence any decisions with respect to the
20 conduct of the legal claim or any settlement or resolution
21 thereof. Notwithstanding the foregoing, the civil
22 litigation funding company may contact the consumer or the
23 consumer's attorney to obtain the status of the legal claim
24 and may contact the consumer after the funding date to
25 obtain updated attorney contact information.

26 (C) After the resolution date, neither a civil

1 litigation funding company, nor any person acting on behalf
2 of a civil litigation funding company, shall seek to
3 collect additional funds or threaten civil action for any
4 deficiency.

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

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

10 (b) A licensee shall collect and maintain information
11 annually for a report that shall disclose in detail and under
12 appropriate headings:

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

15 (2) the total number of non-recourse civil litigation
16 fundings outstanding as of December 31st of the preceding
17 calendar year;

18 (3) the minimum, maximum, and average amount of
19 non-recourse civil litigation fundings made during the
20 preceding calendar year;

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

24 (5) the total number of non-recourse civil litigation
25 funding transactions in which the civil litigation funding

1 company received the return of the funding amount, plus any
2 agreed upon fees; the total number of non-recourse civil
3 litigation funding transactions for which the civil
4 litigation funding company received no return of the
5 funding amount or any fees; and the total number of
6 non-recourse civil litigation funding transactions in
7 which the civil litigation funding company received an
8 amount less than the contracted amount.

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

17 (c) The Department shall have the authority to conduct
18 examinations at any time of the books, records, and
19 non-recourse civil litigation funding documents of a licensee
20 or other company or person doing business without the required
21 license. Any licensee being examined must provide to the
22 Department convenient and free access at all reasonable hours
23 at its office or location to all books, records, non-recourse
24 civil litigation funding documents. The officers, directors,
25 and agents of the litigation funding company must facilitate
26 the examination and aid in the examination so far as it is in

1 their power to do so.

2 Section 2-30. Applicability.

3 (a) The contingent right to receive a portion of the
4 potential proceeds of a legal claim is assignable and valid for
5 the purposes of obtaining funding from a licensee under this
6 Section.

7 (b) Nothing in this Act shall cause any non-recourse civil
8 litigation funding transaction conforming to this Act to be
9 deemed to be a "loan or investment contract" or subject to the
10 restrictions or provisions governing loans or investment
11 contracts set forth in the Interest Act, the Consumer
12 Installment Loan Act, or other provisions of Illinois law.

13 Article 3. Licensure.

14 Section 3-1. Licensure requirement.

15 (a) Except as provided in subsection (b), on and after the
16 effective date of this Act, a civil litigation funding company
17 as defined by Section 1-5 must be licensed by the Department as
18 provided in this Article.

19 (b) A civil litigation funding company licensed on the
20 effective date of this Act under the Consumer Installment Loan
21 Act need not comply with subsection (a) until the Department
22 takes action on the civil litigation funding company's
23 application for a non-recourse civil litigation funding

1 license. The application must be submitted to the Department
2 within 3 months after the effective date of this Act. If the
3 application is not submitted within 3 months after the
4 effective date of this Act, the civil litigation funding
5 company is subject to subsection (a).

6 Section 3-5. Licensure.

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

13 (1) that the financial responsibility, experience,
14 character, and general fitness of the applicant are such as
15 to command the confidence of the public and to warrant the
16 belief that the business will be operated lawfully and
17 fairly and within the provisions and purpose of this Act;

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

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

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

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

14 (d) A licensee must pay an annual fee of \$1,000. In
15 addition to the annual license fee, the reasonable expense of
16 any examination or hearing by the Secretary under any
17 provisions of this Act shall be borne by the licensee. If a
18 licensee fails to submit an application for renewal by December
19 31st of the then current year, its license shall automatically
20 expire; however, the Secretary, in his or her discretion, may
21 reinstate an expired license upon:

22 (1) payment of the annual fee within 30 days of the
23 date of expiration; and

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

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

1 (e) No licensee shall conduct the business of providing
2 non-recourse civil litigation funding under this Act within any
3 office, suite, room, or place of business in which any other
4 business is solicited or engaged unless the other business is
5 licensed by the Department and, in the opinion of the
6 Secretary, the other business would not be contrary to the best
7 interests of consumers and is authorized by the Secretary in
8 writing.

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

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

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

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

1 license fee.

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

4 The accounts, books, records, and contracts shall be
5 maintained and serviced by the licensee, by another licensee
6 under this Act, or by the Department.

7 Article 4. Administrative Provisions

8 Section 4-5. Prohibited acts. A licensee or unlicensed
9 person or entity entering into non-recourse civil litigation
10 funding may not commit, or have committed, on behalf of the
11 licensee or unlicensed person or entity, any of the following
12 acts:

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

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

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

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

1 (5) Making a misrepresentation of a material fact by an
2 applicant for licensure in obtaining or attempting to obtain a
3 license.

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

6 (A) a confession of judgment clause;

7 (B) a mandatory arbitration clause that is oppressive,
8 unfair, unconscionable, or substantially in derogation of
9 the rights of consumers; or

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

12 (7) Taking any power of attorney.

13 Section 4-10. Enforcement and remedies.

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

16 (b) Any material violation of this Act, including the
17 commission of an act prohibited under Section 4-5, constitutes
18 a violation of the Consumer Fraud and Deceptive Business
19 Practices Act.

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

23 (d) Subject to the Illinois Administrative Procedure Act,
24 the Secretary may hold hearings, make findings of fact,
25 conclusions of law, issue cease and desist orders, have the

1 power to issue fines of up to \$10,000 per violation, refer the
2 matter to the appropriate law enforcement agency for
3 prosecution under this Act, and suspend or revoke a license
4 granted under this Act. All proceedings shall be open to the
5 public.

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

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

26 Within 10 business days after service of the cease and

1 desist order, the licensee or other person may request a
2 hearing in writing. The Secretary shall schedule a hearing
3 within 30 days after the request for a hearing unless otherwise
4 agreed to by the parties. The Secretary shall have the
5 authority to adopt rules for the administration of this
6 Section.

7 If it is determined that the Secretary had the authority to
8 issue the cease and desist order, he or she may issue such
9 orders as may be reasonably necessary to correct, eliminate, or
10 remedy the conduct.

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

18 (f) The Secretary may, after 10 business days notice by
19 registered mail to the licensee at the address set forth in the
20 license stating the contemplated action and in general the
21 grounds therefore, fine the licensee an amount not exceeding
22 \$10,000 per violation, or revoke or suspend any license issued
23 by the Department if found that:

24 (1) the licensee has failed to comply with any
25 provision of this Act or any order, decision, finding,
26 rule, regulation, or direction of the Secretary lawfully

1 made under the authority of this Act; or

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

6 No revocation, suspension, or surrender of any license
7 shall impair or affect the obligation of any pre-existing
8 lawful contract between the civil litigation company and a
9 consumer.

10 The Secretary may issue a new license to a licensee
11 whose license has been revoked when facts or conditions
12 that clearly would have warranted the Secretary in refusing
13 originally to issue the license no longer exist.

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

21 An order assessing a fine, an order revoking or
22 suspending a license, or an order denying or refusing to
23 renew a license shall take effect upon service of the order
24 unless the licensee requests a hearing, in writing, within
25 10 days after the date of service. In the event a hearing
26 is requested, the order shall be stayed until final

1 administrative order is entered.

2 If the licensee requests a hearing, the Secretary shall
3 schedule a hearing within 30 days after the request for a
4 hearing unless otherwise agreed to by the parties.

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

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

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

17 Section 4-15. Bonding.

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

24 (b) A bond posted under subsection (a) must continue in
25 effect for the period of licensure and for 3 additional years

1 if the bond is still available. The bond must be available to
2 pay damages and penalties to be a consumer harmed by a
3 violation of this Act.

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

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

11 Section 4-25. Rulemaking.

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

18 (b) The Department may adopt rules in connection with the
19 activities of licensees that are necessary and appropriate for
20 the protection of the consumers in this State. These rules
21 shall be consistent with this Act.

22 Section 4-28. Confidentiality. All information collected
23 by the Department under an examination or investigation of a

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

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

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

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

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

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

20 Article 90. Amendatory Provisions

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

1 (5 ILCS 80/4.25)

2 Sec. 4.25. Acts Act repealed on January 1, 2015 and May 31,
3 2015.

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

5 The Genetic Counselor Licensing Act.

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

7 The Non-Recourse Civil Litigation Funding Act.

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

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

11 (205 ILCS 670/21) (from Ch. 17, par. 5427)

12 Sec. 21. Application of Act. This Act does not apply to any
13 person, partnership, association, limited liability company,
14 or corporation doing business under and as permitted by any law
15 of this State or of the United States relating to banks,
16 savings and loan associations, savings banks, credit unions, or
17 licensees under the Residential Mortgage License Act for
18 residential mortgage loans made pursuant to that Act. This Act
19 does not apply to business loans. This Act does not apply to
20 payday loans. Except as provided in Section 2-10 of the
21 Non-Recourse Civil Litigation Funding Act, this Act does not
22 apply to non-recourse civil litigation funding.

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

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

3 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

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

1 Contract Renewal Act, the Non-Recourse Civil Litigation
2 Funding Act, or the Personal Information Protection Act commits
3 an unlawful practice within the meaning of this Act.

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

6 Section 99. Effective date. This Act takes effect 180 days
7 after becoming law.