

HB 2771 -- LITIGATION FUNDING

SPONSOR: Christofanelli

CONSUMER LEGAL FUNDING MODEL ACT (Sections 436.550 to 436.570, RSMo)

This bill creates the Consumer Legal Funding Model Act" and contains several definitional terms including "Consumer legal funding contract (contract)" in which a consumer legal funding company (company) purchases and a consumer assigns to the company a contingent right to receive moneys from the settlement, judgment, award or verdict from a consumer's legal claim. The bill details the requirements to be included in the contract, which is not considered to be a loan. The company must provide the consumer's attorney with written notice of the contract provided to the consumer within 3 business days of the funding date. The contract is valid for a period of 48 months.

The bill details actions that cannot be taken by the company such as paying or offering to pay or accepting commissions, referral fees, or other forms of consideration from an attorney, medical provider, etc. or intentionally advertising false or misleading information; or receiving any right to or make decisions relating to the conduct of the underlying legal claim or resolution thereof.

The bill provides for disclosures to be included in the contract which are regarded as material terms of the contract. The bill specifies the written language to be contained in the body of the contract such as informing the consumer that if there is no recovery or insufficient money to pay back the company in full, the consumer will not be obligated to pay the company anything in excess of the recovery, unless the consumer violated the contract.

The bill does not restrict the Attorney General's powers or performance of duties. The company must be registered according to the standards developed by the Department of Commerce and Insurance (DCI) and the bill details provisions relating to denial of applications for registration.

CIVIL LITIGATION FUNDING ACT (Sections 436.571 to 436.580)

This bill requires all civil litigation funding to meet certain specified requirements. This Act applies to any class actions but does not apply to litigation financing provided to commercial enterprises. A "litigation financing transaction" is defined as financing provided to a consumer in return for the consumer assigning a contingent right to receive moneys from the settlement, judgment, award, or verdict from a consumer's legal claim.

A litigation financier must be registered with the Secretary of State's Office (SOS) and meet the requirements included in the bill, including the posting of a surety bond of not less than \$50,000. A litigation financier cannot engage in financing transactions in the state unless it is registered with the SOS. In addition, the litigation financier shall file annual reports with the SOS as stated in the bill. The SOS shall release the report and summary to the public after redacting personally identifying information of any consumer.

The bill details actions that cannot be taken by the litigation financier which are similar to the actions that cannot be taken by the consumer legal funding company. The written contract must be completely filled in. The bill provides for disclosures to be included in the contract which are regarded as material terms of the contract. In addition, the existence of litigation financing arrangements are subject to discovery in personal injury litigation.

The practice of litigation financing is regulated by the DCI and any violation of the provisions of the Act make the contract unenforceable by the parties or any successor-in-interest.