

SECOND REGULAR SESSION

SENATE BILL NO. 785

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Pre-filed December 4, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5119S.01I

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 known as sections 436.550, 436.552, 436.554, 436.556, 436.558, 436.560, 436.562, 436.566, 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 Litigation Funding Act".

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

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

(2) "Charges", the amount of money to be paid to the civil litigation funding company by or on behalf of the consumer, above the funded amount provided by or on behalf of the company to a Missouri consumer under sections 436.550 to 436.570. Charges include all administrative, origination, underwriting, or other fees, no matter how denominated;

(3) "Civil litigation funding contract", a nonrecourse contractual transaction in which a civil litigation funding company purchases and a consumer assigns to the company a contingent right to receive an

19 amount of the potential proceeds of a settlement, judgment, award, or
20 verdict obtained in the consumer's legal claim;

21 (4) "Civil litigation funding company" or "company", a person or
22 entity that enters into a civil litigation funding contract with a
23 Missouri consumer. This term shall not include:

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

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

27 a. That provides financing to a civil litigation funding company;

28 or

29 b. To which a civil litigation funding company grants a security
30 interest or transfers any rights or interest in a civil litigation funding
31 contract; or

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

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

36 (a) Resides or is domiciled in Missouri; or

37 (b) Has a legal claim in Missouri;

38 (6) "Funded amount", the amount of moneys provided to or on
39 behalf of the consumer in the civil litigation funding contract;

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

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

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

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

436.554. 1. All civil litigation funding contracts shall meet the
2 following requirements:

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

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

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

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

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

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

26 **2. The civil litigation funding company shall provide the**
27 **consumer's attorney with a written notification of the civil litigation**
28 **funding contract provided to the consumer within three business days**
29 **of the funding date by way of postal mail, courier service, facsimile, or**
30 **electronic means.**

436.556. A civil litigation funding company shall not:

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

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

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

11 **(4) Refer, in furtherance of an initial civil litigation funding**

12 contract, a customer or potential customer to a specific attorney, law
13 firm, medical provider, chiropractor, or physical therapist or any of
14 their employees; provided, however, if a customer needs legal
15 representation, the company may refer the customer to a local or state
16 bar association referral service;

17 (5) Fail to promptly supply a copy of the executed contract to the
18 attorney for the consumer;

19 (6) Knowingly provide funding to a consumer who has previously
20 assigned or sold a portion of the consumer's right to proceeds from his
21 or her legal claim without first making payment to or purchasing a
22 prior unsatisfied civil litigation funding company's entire funded
23 amount and contracted charges, unless a lesser amount is otherwise
24 agreed to in writing by the civil litigation funding companies, except
25 that multiple companies may agree to contemporaneously provide
26 funding to a consumer provided that the consumer and the consumer's
27 attorney consent to the arrangement in writing;

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

32 (8) Pay or offer to pay for court costs, filing fees, or attorneys'
33 fees either during or after the resolution of the legal claim, using funds
34 from the civil litigation funding contract.

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

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

9 3. All civil litigation funding contracts shall not assess any
10 additional charges or interest to the consumer after thirty months from
11 the funding date, and the outstanding balance of any civil litigation
12 funding contract after thirty months from the funding date shall
13 constitute an additional limitation on the interest and charges accrued.
14 No civil litigation funding company shall incorporate outstanding

15 funds, in part or whole, from an existing civil litigation funding
16 contract into a new civil litigation funding contract.

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

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

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

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

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

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

18 (2) In accordance with the provisions set forth in subdivision (2)
19 of subsection 1 of section 436.554, within the body of the contract:
20 "Consumer's Right to Cancellation: You may cancel this contract
21 without penalty or further obligation within five business days after
22 the funding date if you either:

23 (a) Return to the civil litigation funding company the full
24 amount of the disbursed funds by delivering the company's uncashed
25 check to the company's office in person; or

26 (b) Mail, by insured, certified, or registered United States mail,
27 to the company at the address specified in the contract, a notice of
28 cancellation and include in such mailing a return of the full amount of
29 disbursed funds in the form of the company's uncashed check or a
30 registered or certified check or money order.";

31 (3) The civil litigation funding company shall have no role in
32 deciding whether, when and how much the legal claim is settled for,
33 however, the consumer and consumer's attorney shall notify the
34 company of the outcome of the legal claim by settlement or
35 adjudication prior to the resolution date. The company may seek

36 updated information about the status of the legal claim, but in no event
37 shall the company interfere with the independent professional
38 judgment of the attorney in the handling of the legal claim or any
39 settlement thereof;

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

51 (5) Located immediately above the place on the contract where
52 the consumer's signature is required, in twelve-point font: "Do not sign
53 this contract before you read it completely or if it contains any blank
54 spaces. You are entitled to a completely filled-in copy of the
55 contract. Before you sign this contract, you should obtain the advice
56 of an attorney. Depending on the circumstances, you may want to
57 consult a tax, public or private benefits planning, or financial
58 professional. You acknowledge that your attorney in the legal claim
59 has provided no tax, public or private benefits planning, or financial
60 advice regarding this transaction."

436.562. Nothing in sections 436.550 to 436.570 shall be construed
2 to restrict the exercise of powers or the performance of the duties of
3 the state attorney general, which he or she is authorized to exercise or
4 perform by law.

436.566. An attorney or law firm retained by the consumer in the
2 legal claim shall not have a financial interest in the civil litigation
3 funding company offering civil litigation funding to that
4 consumer. Additionally, any attorney who has referred the consumer
5 to his or her retained attorney shall not have a financial interest in the
6 civil litigation funding company offering civil litigation funding to that
7 consumer.

436.568. No communication between the consumer's attorney in

2 the legal claim and the civil litigation funding company as it pertains
3 to the civil litigation funding contract shall limit, waive, or abrogate
4 the scope or nature of any statutory or common-law privilege, including
5 the work-product doctrine and the attorney-client privilege.

436.570. 1. Unless a civil litigation funding company has first
2 registered under sections 436.550 to 436.570, the company shall not
3 engage in the business of civil litigation funding in this state.

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

12 3. A certificate of registration shall not be issued unless the
13 department of insurance, financial institutions and professional
14 registration, upon investigation, finds that the character and fitness of
15 the applicant company, and of the officers and directors thereof, are
16 such as to warrant belief that the business will be operated honestly
17 and fairly within the purposes of sections 436.550 to 436.570.

18 4. Every registrant shall also, at the time of filing such
19 application, file with the department of insurance, financial
20 institutions and professional registration, if the department so
21 requires, a bond satisfactory to the department in an amount not to
22 exceed fifty thousand dollars. In lieu of the bond, at the option of the
23 registrant, the registrant may post an irrevocable letter of credit. The
24 terms of the bond shall run concurrent with the period of time during
25 which the registration will be in effect. The bond shall provide that the
26 registrant will faithfully conform to and abide by the provisions of
27 sections 436.550 to 436.570 and to all rules lawfully made by the
28 administrator under the provisions of sections 436.550 to 436.570 and
29 to any such person or persons any and all amounts of money that may
30 become due or owing to the state or to such person or persons from the
31 registrant under and by virtue of sections 436.550 to 436.570 during the
32 period for which the bond is given.

33 5. Upon written request, the applicant is entitled to a hearing on

34 the question of the applicant's qualifications for a registration if:

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

38 (2) The department has not issued a registration within sixty
39 days after the application for the registration was filed.

40 A request for a hearing shall not be made more than fifteen days after
41 the department has mailed a written notice to the applicant that the
42 application has been denied and stating in substance the department's
43 findings supporting denial of the application.

44 6. Notwithstanding the prior approval requirement of subsection
45 1 of this section, a civil litigation funding company that registered with
46 the department of insurance, financial institutions and professional
47 registration between the effective date of sections 436.550 to 436.570
48 and six months thereafter may engage in civil litigation funding while
49 the company's registration is awaiting approval by the department. All
50 civil litigation funding contracts entered into prior to the effective date
51 of sections 436.550 to 436.570 are not subject to the terms of sections
52 436.550 to 436.570.

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

58 8. The department of insurance, financial institutions and
59 professional registration shall have the authority to enforce the
60 provisions of sections 436.550 to 436.570 and to promulgate rules and
61 regulations to implement the provisions of sections 436.550 to
62 436.570. Any rule or portion of a rule, as that term is defined in section
63 536.010, that is created under the authority delegated in this section
64 shall become effective only if it complies with and is subject to all of
65 the provisions of chapter 536 and, if applicable, section 536.028. This
66 section and chapter 536 are nonseverable, and if any of the powers
67 vested with the general assembly pursuant to chapter 536 to review, to
68 delay the effective date, or to disapprove and annul a rule are
69 subsequently held unconstitutional, then the grant of rulemaking
70 authority and any rule proposed or adopted after August 28, 2016, shall

71 **be invalid and void.**

✓

Unofficial

Bill

Copy