

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  
5 Non-Recourse Civil Litigation Funding Act.

6 Section 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.

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

16 "Department" means the Department of Financial and  
17 Professional Regulation.

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

19 "Non-recourse civil litigation funding" means a  
20 transaction in which a civil litigation funding company  
21 purchases and a consumer assigns the contingent right to  
22 receive an amount of the potential proceeds of a settlement,  
23 judgment, award, or verdict obtained in the consumer's legal

1 claim to the civil litigation funding company.

2 Section 10. Contract provisions. All contracts for  
3 non-recourse civil litigation funding shall comply with the  
4 following requirements:

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

8 (A) the total dollar amount of funds to be paid to  
9 the consumer;

10 (B) an itemization of one-time fees; and

11 (C) the total dollar amount being assigned by the  
12 consumer to the civil litigation funding company, set  
13 forth in 6-month intervals for 36 months.

14 (2) The contract shall provide that the consumer may  
15 cancel the contract within 5 business days following the  
16 consumer's receipt of funds, without penalty or further  
17 obligation. The contract shall contain the following  
18 notice written in at least 12-point, bold face type:

19 "Consumer's right to cancellation: You may cancel this  
20 contract without penalty or further obligation within 5  
21 business days after the date you receive funds from (insert  
22 name of civil litigation funding company).".

23 The contract also shall specify that in order for the  
24 cancellation to be effective, the consumer must either return  
25 to the civil litigation funding company the full amount of

1 disbursed funds by delivering the civil litigation funding  
2 company's uncashed check to the civil litigation company's  
3 offices in person within 5 business days after the disbursement  
4 of the funds or mail a notice of cancellation and include in  
5 that mailing a return of the full amount of disbursed funds in  
6 the form of the civil litigation funding company's uncashed  
7 check, or a registered or certified check or money order, by  
8 insured, registered, or certified United States mail,  
9 postmarked within 5 business days after the receipt of those  
10 funds from the civil litigation funding company, at the address  
11 specified in the contract for cancellation.

12 (3) The contract shall contain all of the following  
13 statements in at least 12-point bold face type:

14 (A) (Insert name of civil litigation funding  
15 company) agrees that it shall have no right to and will  
16 not make any decisions with respect to the conduct of  
17 the underlying legal claim or any settlement or  
18 resolution thereof and that the right to make those  
19 decisions remains solely with you and your attorney in  
20 the legal claim.

21 (B) (Insert name of civil litigation funding  
22 company) agrees that it shall only accept an assignment  
23 of an amount of the potential proceeds, rather than an  
24 assignment of the consumer's legal claim. (Insert name  
25 of civil litigation funding company) agrees that it  
26 shall have no right to pursue the legal claim on behalf

1 of or in lieu of the consumer.

2 (4) All contracts to the consumer must contain the  
3 following statement, in plain language in a box with  
4 15-point, bold face type, in all capitalized letters,  
5 stating the following:

6 "THE CIVIL LITIGATION FUNDING COMPANY SHALL ONLY BE  
7 PAID FROM THE PROCEEDS OF THE LEGAL CLAIM. YOU WILL NOT OWE  
8 THE CIVIL LITIGATION FUNDING COMPANY ANYTHING IF THERE IS  
9 NO RECOVERY OF PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU  
10 VIOLATE THE TERMS OF THIS AGREEMENT. IF THERE ARE  
11 INSUFFICIENT PROCEEDS TO PAY THE CIVIL LITIGATION FUNDING  
12 COMPANY IN FULL, THE CIVIL LITIGATION FUNDING COMPANY SHALL  
13 ONLY BE PAID TO THE EXTENT THAT THERE ARE AVAILABLE  
14 PROCEEDS FROM THE LEGAL CLAIM, UNLESS YOU VIOLATE THE TERMS  
15 OF THIS AGREEMENT."

16 (5) The contract shall contain the following statement  
17 in at least 12-point bold face type located immediately  
18 above the space where the consumer signature is required:

19 "Do not sign this Agreement before you read it  
20 completely or if it contains any blank spaces. You are  
21 entitled to a completely filled-in copy of this contract.  
22 Before you sign this Agreement you should obtain the advice  
23 of an attorney. Depending on the circumstances, you may  
24 want to consult a tax, public, or private benefit planning  
25 or financial professional. You acknowledge that your  
26 attorney in the legal claim has provided no tax, public, or

1 private benefit planning regarding this transaction.".

2 The contract shall contain the following statement  
3 located above the signature line: "The consumer  
4 understands and agrees that the funds received from this  
5 Non-Recourse Civil Litigation Funding shall not be used to  
6 pay for litigation costs related to the underlying Legal  
7 claim."

8 (6) The contract for nonrecourse civil litigation  
9 funding shall contain a written acknowledgement by the  
10 consumer that he or she has reviewed the contract in its  
11 entirety, that he or she shall notify his or her current  
12 attorney and any successor attorneys representing him or  
13 her in the legal claim of the existence of the transaction  
14 and shall instruct the nonrecourse civil litigation  
15 funding company to provide the attorney with a copy of the  
16 contract. Additionally, before obtaining any additional or  
17 subsequent nonrecourse civil litigation funding, the  
18 consumer will notify his or her attorney and receive prior  
19 written permission for such transaction from the prior  
20 civil litigation funding company.

21 Section 15. Priorities. Any attorney's lien, Medicare  
22 lien, Medicaid lien, or health care provider lien against the  
23 consumer's legal claim shall take priority over any lien of the  
24 civil litigation funding company.

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

3           (1) The civil litigation funding company shall not pay  
4 or offer to pay commissions or referral fees to any  
5 attorney or employee of a law firm or to any medical  
6 provider, chiropractor, or physical therapist or their  
7 employees for referring a consumer to the civil litigation  
8 funding company. The civil litigation funding company  
9 agrees not to accept any commissions, referral fees, or  
10 rebates from any attorney or employee of a law firm or any  
11 medical provider, chiropractor, or physical therapist or  
12 their employees, other than what is agreed to be paid to  
13 the civil litigation funding company out of the proceeds of  
14 the legal claim pursuant to the signed contract between the  
15 consumer and the civil litigation funding company.

16           (2) The civil litigation funding company shall not  
17 advertise false or intentionally misleading information  
18 regarding its product or services.

19           (3) The civil litigation funding company shall not  
20 knowingly provide funding to a consumer who has previously  
21 sold and assigned an amount of his potential proceeds from  
22 his legal claim to another civil litigation funding company  
23 without first purchasing that civil litigation funding  
24 company's entire accrued balance unless otherwise agreed  
25 in writing by the civil litigation funding companies and  
26 the consumer.

1           (4) The civil litigation funding company shall not  
2 offer single premium credit life, disability, or  
3 unemployment insurance that is to be financed through a  
4 civil litigation funding transaction.

5           (5) For non-English speaking consumers, upon the  
6 written request of the consumer, the principal terms of the  
7 contract must be translated in writing into the consumer's  
8 primary language, the consumer must sign the translated  
9 document containing the principal terms and initial each  
10 page, and the translator or lawyer must sign an affirmation  
11 confirming that the principal terms have been presented to  
12 the consumer in the consumer's primary language and  
13 acknowledged by the consumer. Principal terms shall  
14 include all items that must be disclosed by this Section.

15           Section 25. Sale and assignment of proceeds of legal  
16 claims. The contingent right to receive an amount of the  
17 potential proceeds of a legal claim is assignable and that  
18 assignment is valid for the purposes of obtaining funding from  
19 a civil litigation funding company.

20           Section 30. Civil litigation funding companies;  
21 requirements.

22           (a) It is unlawful to enter into a non-recourse civil  
23 litigation funding transaction unless the civil litigation  
24 funding company (i) is licensed by the Department in accordance

1 with the licensure requirements of the Consumer Installment  
2 Loan Act, (ii) has received special authorization in the form  
3 of an Other Business Authorization for non-recourse civil  
4 litigation funding certificate from the Department, and (iii)  
5 complies with all Sections of this Act.

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

12 Section 35. List of civil litigation funding companies. The  
13 Department shall maintain a list of all persons operating in  
14 accordance with Section 30 of this Act that have notified the  
15 Department that they intend to be civil litigation funding  
16 companies. This list shall be posted on the Department's  
17 website and shall be made available by the Department to any  
18 person who requests the list.

19 Section 40. Reporting.

20 (a) The Department shall require a civil litigation funding  
21 company operating in accordance with Section 30 of this Act to  
22 annually submit data regarding the number of non-recourse civil  
23 litigation funding transactions and the amount of funding  
24 provided to Illinois consumers during the year. This data must



1 be submitted to the Department no later than February 15 of  
2 each year the civil litigation funding company does business in  
3 this State for the previous year of activity.

4 (b) Every civil litigation funding company shall retain and  
5 use in its business, or at another location approved by the  
6 Director, such records as may be required by the Director to  
7 enable the Director to determine whether the civil litigation  
8 funding company is complying with the provisions of this Act  
9 and the rules adopted pursuant to this Act. Every civil  
10 litigation funding company shall preserve the records of any  
11 non-recourse civil litigation funding for at least 2 years  
12 after making the final entry for such transaction. Accounting  
13 systems maintained in whole or in part by mechanical or  
14 electronic data processing methods that provide information  
15 equivalent to that otherwise required and follow generally  
16 accepted accounting principles are acceptable for that  
17 purpose, if approved by the Director in writing.

18 Section 45. Cease and desist.

19 (a) The Department may issue a cease and desist order to  
20 any person doing business without the required license or to  
21 any licensee, who, in the opinion of the Department, is  
22 violating or is about to violate the best practices or  
23 licensure requirements of this Act.

24 (b) The Department shall serve notice of its action,  
25 designated as a cease and desist order made pursuant to this

1 Section, including a statement of the reasons for the action,  
2 either personally or by certified mail, return receipt  
3 requested. Service by certified mail shall be deemed completed  
4 when the notice is deposited in the U.S. mail.

5 (c) Within 15 days of service of the cease and desist  
6 order, the licensee or other person may request, in writing, a  
7 hearing.

8 (d) The Department shall schedule a hearing within 30 days  
9 after the request for a hearing unless otherwise agreed to by  
10 the parties.

11 (e) If it is determined that the Department had the  
12 authority to issue the cease and desist order, it may issue  
13 such orders as may be reasonably necessary to correct,  
14 eliminate, or remedy such conduct, limited to the penalties  
15 listed in Section 30 of this Act.

16 (f) The powers vested in the Department by this Section are  
17 additional to any and all other powers and remedies vested in  
18 the Department by law, and nothing in this Section shall be  
19 construed as requiring that the Department shall employ the  
20 power conferred in this Section instead of or as a condition  
21 precedent to the exercise of any other power or remedy vested  
22 in the Department.

23 Section 50. Penalties.

24 (a) Any person who engages in business as a civil  
25 litigation funding company without the license required by this

1 Act shall be guilty of a Class 4 felony.

2 (b) A license issued under this Act may be revoked if the  
3 licensee, or any directors, managers of a limited liability  
4 company, partners, or officer thereof is convicted of a felony.

5 (c) Any person engaging in non-recourse litigation funding  
6 without the required license and found in violation of this  
7 Act, may be subject to fines assessed by the Department,  
8 limited to a maximum of \$50,000, after an administrative  
9 hearing on the case is heard. No fines can be imposed by the  
10 Department until the results of the administrative hearing are  
11 concluded.

12 (d) No provision of this Section imposing any liability  
13 shall apply to any act done or omitted in conformity with any  
14 rule or regulation or written interpretation thereof by the  
15 Department, notwithstanding that after such act or omission has  
16 occurred, the rule, regulation or interpretation is amended,  
17 rescinded, or determined by judicial or other authority to be  
18 invalid for any reason.

19 Section 55. Judicial review. All final administrative  
20 decisions of the Department hereunder shall be subject to  
21 judicial review pursuant to the provisions of the  
22 Administrative Review Law, and all amendments and  
23 modifications thereof, and any rules adopted pursuant thereto.

24 Section 60. Application of the Act. During the first 90

1 days after the effective date of this Act, any person who has  
2 applied for a license under this Act, or filed written notice  
3 of intention to apply for such license with the Department, and  
4 who has not been denied, shall be subject to all provisions of  
5 this Act and may engage in non-recourse litigation funding as  
6 if he were a licensee under this Act. This Act shall not apply  
7 to any loan transaction entered into by a civil litigation  
8 funding company that conforms to the Consumer Installment Loan  
9 Act entered into prior or subsequent to such effective date of  
10 this Act.

11 Section 900. The Consumer Installment Loan Act is amended  
12 by changing Section 21 as follows:

13 (205 ILCS 670/21) (from Ch. 17, par. 5427)

14 Sec. 21. Application of Act. This Act does not apply to any  
15 person, partnership, association, limited liability company,  
16 or corporation doing business under and as permitted by any law  
17 of this State or of the United States relating to banks,  
18 savings and loan associations, savings banks, credit unions, or  
19 licensees under the Residential Mortgage License Act for  
20 residential mortgage loans made pursuant to that Act. This Act  
21 does not apply to business loans. This Act does not apply to  
22 payday loans. This Act does not apply to non-recourse civil  
23 litigation funding, except for its licensure requirements.

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

1           Section 970. Severability. The provisions of this Act are  
2           severable under Section 1.31 of the Statute on Statutes.

3           Section 999. Effective date. This Act takes effect upon  
4           becoming law.