

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 785

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:

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

5 436.550. Sections 436.550 to 436.570 shall be known and may
6 be cited as the "Civil Litigation Funding Act".

7 436.552. As used in sections 436.550 to 436.570, the
8 following terms mean:

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

17 (2) "Charges", the amount of money to be paid to the civil

1 litigation funding company by or on behalf of the consumer, above
2 the funded amount provided by or on behalf of the company to a
3 Missouri consumer under sections 436.550 to 436.570. Charges
4 include all administrative, origination, underwriting, or other
5 fees, no matter how denominated;

6 (3) "Civil litigation funding contract", a nonrecourse
7 contractual transaction in which a civil litigation funding
8 company purchases and a consumer assigns to the company a
9 contingent right to receive an amount of the potential proceeds
10 of a settlement, judgment, award, or verdict obtained in the
11 consumer's legal claim;

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

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

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

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

20 b. To which a civil litigation funding company grants a
21 security interest or transfers any rights or interest in a civil
22 litigation funding contract; or

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

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

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

28 (b) Has a legal claim in Missouri;

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

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

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

10 (9) "Legal claim", a bona fide civil claim or cause of
11 action, any alternative dispute resolution proceeding, or any
12 administrative proceeding before any agency or instrumentality of
13 this state;

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

17 436.554. 1. All civil litigation funding contracts shall
18 meet the following requirements:

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

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

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

28 (b) Mails, by insured, certified, or registered United

1 States mail, to the address specified in the contract, a notice
2 of cancellation and includes in such mailing a return of the full
3 amount of disbursed funds in the form of the company's uncashed
4 check or a registered or certified check or money order;

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

7 (4) The contract shall require the consumer to give
8 nonrevocable written direction to his or her attorney requiring
9 the attorney to notify the civil litigation funding company when
10 the legal claim has been resolved. Once the civil litigation
11 funding company confirms in writing the amount due under the
12 contract, the consumer's attorney shall pay the civil litigation
13 funding company from the proceeds of the resolution of the legal
14 claim the amount due within ten business days.

15 2. The civil litigation funding company shall provide the
16 consumer's attorney with a written notification of the civil
17 litigation funding contract provided to the consumer within three
18 business days of the funding date by way of postal mail, courier
19 service, facsimile, or electronic means.

20 436.556. A civil litigation funding company shall not:

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

25 (2) Accept any commissions, referral fees, rebates, or
26 other forms of consideration from an attorney, law firm, medical
27 provider, chiropractor, or physical therapist or any of their
28 employees;

1 (3) Advertise materially false or misleading information
2 regarding its products or services;

3 (4) Refer, in furtherance of an initial civil litigation
4 funding contract, a customer or potential customer to a specific
5 attorney, law firm, medical provider, chiropractor, or physical
6 therapist or any of their employees; provided, however, if a
7 customer needs legal representation, the company may refer the
8 customer to a local or state bar association referral service;

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

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

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

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

1 contract; or

2 (9) Assign a civil litigation funding contract in whole or
3 part.

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

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

12 3. All civil litigation funding contracts shall not assess
13 any additional charges or interest to the consumer after thirty
14 months from the funding date, and the outstanding balance of any
15 civil litigation funding contract after thirty months from the
16 funding date shall constitute an additional limitation on the
17 interest and charges accrued. No civil litigation funding
18 company shall incorporate outstanding funds, in part or whole,
19 from an existing civil litigation funding contract into a new
20 civil litigation funding contract.

21 4. Only attorney's liens related to the legal claim,
22 Medicare, or other statutory liens related to the legal claim
23 shall take priority over claims from the civil litigation funding
24 company. All other liens and claims shall take priority by
25 normal operation of law.

26 436.560. All civil litigation funding contracts shall
27 contain the disclosures specified in this section, which shall
28 constitute material terms of the contract. Unless otherwise

1 specified, the disclosures shall be typed in at least
2 twelve-point bold-type font and be placed clearly and
3 conspicuously within the contract, as follows:

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

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

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

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

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

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

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

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

1 money order.";

2 (3) The civil litigation funding company shall have no role
3 in deciding whether, when and how much the legal claim is settled
4 for, however, the consumer and consumer's attorney shall notify
5 the company of the outcome of the legal claim by settlement or
6 adjudication prior to the resolution date. The company may seek
7 updated information about the status of the legal claim, but in
8 no event shall the company interfere with the independent
9 professional judgment of the attorney in the handling of the
10 legal claim or any settlement thereof;

11 (4) Within the body of the contract, in all capital letters
12 in at least twelve-point bold-type font contained within a box:
13 "THE FUNDED AMOUNT AND AGREED UPON CHARGES SHALL BE PAID ONLY
14 FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE PAID ONLY TO
15 THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL
16 CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE CIVIL LITIGATION
17 FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR
18 LEGAL CLAIM, UNLESS YOU OR YOUR ATTORNEY HAS VIOLATED ANY
19 MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD
20 AGAINST THE CIVIL LITIGATION FUNDING COMPANY."; and

21 (5) Located immediately above the place on the contract
22 where the consumer's signature is required, in twelve-point font:
23 "Do not sign this contract before you read it completely or if it
24 contains any blank spaces. You are entitled to a completely
25 filled-in copy of the contract. Before you sign this contract,
26 you should obtain the advice of an attorney. Depending on the
27 circumstances, you may want to consult a tax, public or private
28 benefits planning, or financial professional. You acknowledge

1 that your attorney in the legal claim has provided no tax, public
2 or private benefits planning, or financial advice regarding this
3 transaction."

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

8 436.566. An attorney or law firm retained by the consumer
9 in the legal claim shall not have a financial interest in the
10 civil litigation funding company offering civil litigation
11 funding to that consumer. Additionally, any attorney who has
12 referred the consumer to his or her retained attorney shall not
13 have a financial interest in the civil litigation funding company
14 offering civil litigation funding to that consumer.

15 436.568. No communication between the consumer's attorney
16 in the legal claim and the civil litigation funding company as it
17 pertains to the civil litigation funding contract shall limit,
18 waive, or abrogate the scope or nature of any statutory or
19 common-law privilege, including the work-product doctrine and the
20 attorney-client privilege.

21 436.570. 1. Unless a civil litigation funding company has
22 first registered under sections 436.550 to 436.570, the company
23 shall not engage in the business of civil litigation funding in
24 this state.

25 2. An applicant's registration shall be filed in the manner
26 prescribed by the department of insurance, financial institutions
27 and professional registration and shall contain the information
28 the department requires to make an evaluation of the character

1 and fitness of the applicant company. The initial application
2 shall be accompanied by a five hundred dollar fee. A renewal
3 registration shall include a two hundred dollar fee. A
4 registration shall be renewed every two years and expires on the
5 thirtieth of September.

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

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

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

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

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

9
10 A request for a hearing shall not be made more than fifteen days
11 after the department has mailed a written notice to the applicant
12 that the application has been denied and stating in substance the
13 department's findings supporting denial of the application.

14 6. Notwithstanding the prior approval requirement of
15 subsection 1 of this section, a civil litigation funding company
16 that registered with the department of insurance, financial
17 institutions and professional registration between the effective
18 date of sections 436.550 to 436.570 and six months thereafter may
19 engage in civil litigation funding while the company's
20 registration is awaiting approval by the department. All civil
21 litigation funding contracts entered into prior to the effective
22 date of sections 436.550 to 436.570 are not subject to the terms
23 of sections 436.550 to 436.570.

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

1 8. The department of insurance, financial institutions and
2 professional registration shall have the authority to enforce the
3 provisions of sections 436.550 to 436.570 and to promulgate rules
4 and regulations to implement the provisions of sections 436.550
5 to 436.570. Any rule or portion of a rule, as that term is
6 defined in section 536.010, that is created under the authority
7 delegated in this section shall become effective only if it
8 complies with and is subject to all of the provisions of chapter
9 536 and, if applicable, section 536.028. This section and
10 chapter 536 are nonseverable, and if any of the powers vested
11 with the general assembly pursuant to chapter 536 to review, to
12 delay the effective date, or to disapprove and annul a rule are
13 subsequently held unconstitutional, then the grant of rulemaking
14 authority and any rule proposed or adopted after August 28, 2016,
15 shall be invalid and void.