

SECOND REGULAR SESSION

HOUSE BILL NO. 1569

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DUGGER.

5487H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 436, RSMo, by adding thereto eleven new sections relating to the civil justice funding model 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 eleven new sections, to
2 be known as sections 436.550, 436.552, 436.554, 436.556, 436.558, 436.560, 436.562, 436.564,
3 436.566, 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
2 Justice Funding Model Act”.**

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

2 (1) “Advertise”, publishing or disseminating any written, electronic or printed
3 communication or any communication by means of recorded telephone messages or
4 transmitted on radio, television, the Internet or similar communications media, including
5 film strips, motion pictures and videos, published, disseminated, circulated or placed
6 before the public, directly or indirectly, for the purpose of inducing a consumer to enter
7 into a civil justice funding;

8 (2) “Charges”, the amount of money to be paid to the civil justice funding company
9 by or on behalf of the consumer, above the funded amount provided by or on behalf of the
10 company to a Missouri consumer under this act. Charges include all
11 administrative, origination, underwriting or other fees no matter how denominated;

12 (3) “Civil justice funding”, a non-recourse transaction in which a civil justice
13 funding company purchases and a consumer assigns to the company a contingent right to

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 receive an amount of the potential proceeds of a settlement, judgment, award, or verdict
15 obtained in the consumer's legal claim;

16 (4) "Civil justice funding company" or "company", a person or entity that enters
17 into a civil justice funding with a Missouri consumer. This term shall not include:

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

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

20 a. That provides financing to a civil justice funding company; or

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

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

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

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

26 (b) Has a legal claim in Missouri;

27 (6) "Funded amount", the amount of monies provided to or on behalf of the
28 consumer in the civil justice funding. Funded amount does not include charges;

29 (7) "Funding date", the date on which the funded amount is transferred to the
30 consumer by the civil justice company either by personal deliver or via wire, ACH, or other
31 electronic means, or mailed by insured, certified, or registered United States mail;

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

34 (9) "Legal claim", a bona fide civil claim or cause of action; and

35 (10) "Resolution date", the date the amount funded to the consumer, plus the agreed
36 upon changes, are delivered to the civil justice funding company.

436.554. 1. All civil justice fundings shall meet the following requirements:

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

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

7 (a) Returns to the civil justice funding company the full amount of the disbursed
8 funds by delivering the company's uncashed check to the company's office in person; or

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

13 (3) The contract shall contain the initials of the consumer on each page.

14 **2. The contract shall contain a written acknowledgment by the attorney retained**
15 **by the consumer in the legal claim that attests to the following:**

16 **(1) To the best of the attorney's knowledge, all the costs and charges relating to the**
17 **civil justice funding have been disclosed to the consumer;**

18 **(2) The attorney is being paid on a contingency basis pursuant to a written fee**
19 **agreement;**

20 **(3) All proceeds of the legal claim will be disbursed via either the trust account of**
21 **the attorney or a settlement fund established to receive the proceeds of the legal claim on**
22 **behalf of the consumer;**

23 **(4) The attorney is following the written instructions of the consumer with regard**
24 **to the civil justice funding; and**

25 **(5) The attorney has not received a referral fee or other consideration from the civil**
26 **justice funding company in connection with the civil justice funding, nor will the attorney**
27 **receive such fee or other consideration in the future.**

28 **3. Should the acknowledgment required in subsection 2 of this section not be**
29 **completed by the attorney retained by the consumer in the legal claim, the contract shall**
30 **be null and void. The contract will remain valid and enforceable in the event the consumer**
31 **terminates the initial attorney or retains a new attorney with respect to the legal claim.**

436.556. A civil justice funding company shall not:

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

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

8 **(3) Intentionally advertise materially false or misleading information regarding its**
9 **products or services;**

10 **(4) Refer, in furtherance of an initial legal funding, a customer or potential**
11 **customer to a specific attorney, law firm, medical provider, chiropractor, or physical**
12 **therapist or any of their employees; provided, however, if a customer needs legal**
13 **representation, the company may refer the customer to a local or state bar association**
14 **referral service;**

15 **(5) Fail to promptly supply a copy of the executed contract to the attorney for the**
16 **consumer;**

17 **(6) Knowingly provide funding to a consumer who has previously assigned or sold**
18 **a portion of the consumer's right to proceeds from his or her legal claim without first**

19 making payment to or purchasing a prior unsatisfied civil justice funding company's entire
20 funded amount and contracted charges, unless a lesser amount is otherwise agreed to in
21 writing by the civil justice funding companies, except that multiple companies may agree
22 to contemporaneously provide funding to a consumer provided that the consumer and the
23 consumer's attorney consent to the arrangement in writing;

24 (7) Receive any right to nor make any decisions with respect to the conduct of the
25 underlying legal claim or any settlement or resolution thereof. The right to make such
26 decisions shall remain solely with the consumer and the attorney in the legal claim; or

27 (8) Knowingly pay or offer to pay for court costs, filing fees or attorneys fees either
28 during or after the resolution of the legal claim, using funds from the civil justice funding
29 transaction.

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

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

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

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

9 (b) An itemization of one time charges;

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

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

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

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

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

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

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

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

436.562. 1. Nothing in this act shall be construed to restrict the exercise of powers or the performance of the duties of the state attorney general, which he or she is authorized to exercise or perform by law.

2. If a court of competent jurisdiction determines that a civil justice funding company has intentionally violated the provisions of this statute with regard to a specific civil justice funding, the civil justice funding company shall only be entitled to recover the

7 funded amount provided to the consumer in such specific civil justice funding and shall not
8 be entitled to any additional charges.

2 436.564. 1. The contingent right to receive an amount of the potential proceeds of
a legal claim is assignable by a consumer.

3 2. Nothing contained in this act shall be construed to cause any civil justice funding
4 transaction conforming to this act to be deemed a loan or to be subject to any of the
5 provisions governing loans contained in this code. A civil justice funding transaction that
6 complies with this act is not subject to any other statutory or regulatory provisions
7 governing loans or investment contracts. To the extent that this act conflicts with any
8 other law, this act supersedes the other law for the purposes of regulating civil justice
9 fundings in this state.

10 3. Only attorney's liens related to the legal claim or Medicare or other statutory
11 liens related to the legal claim shall take priority over any lien of the civil justice funding
12 company. All other liens shall take priority by normal operation of law.

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

2 436.568. No communication between the consumer's attorney in the legal claim and
the civil justice funding company as it pertains to the civil justice funding shall limit, waive,
3 or abrogate the scope or nature of any statutory or common-law privilege, including the
4 work-product doctrine and the attorney-client privilege.

2 436.570. 1. Unless a civil justice funding company has first registered pursuant to
this act, the company may not engage in the business of civil justice funding in this state.

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

9 3. A certificate of registration may not be issued unless the department of insurance,
10 upon investigation, finds that the character and fitness of the applicant company, and of
11 the officers and directors thereof, are such as to warrant belief that the business will be
12 operated honestly and fairly within the purposes of this act.

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

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

25 (1) The department of insurance has notified the applicant in writing that the
26 application has been denied, or

27 (2) The department of insurance has not issued a registration within sixty days after
28 the application for the registration was filed.

29
30 A request for a hearing may not be made more than fifteen days after the department of
31 insurance has mailed a written notice to the applicant that the application has been denied
32 and stating in substance the department of insurance's findings supporting denial of the
33 application.

34 6. Notwithstanding the prior approval requirement of subsection 1 of this section,
35 a civil justice funding company that registered with the department of insurance between
36 the effective date of this act and six months thereafter may engage in civil justice funding
37 while the company's registration is waiting approval by department of insurance. All
38 funding agreements prior to the effective date of this act are not subject to the terms of this
39 act.

40 7. No civil justice funding company may use any form of civil justice funding
41 contract in this state unless it has been filed with the department of insurance in
42 accordance with the filing procedures set forth by the department of insurance.

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