

HB 512 -- CIVIL LITIGATION FUNDING ACT

SPONSOR: Haahr

COMMITTEE ACTION: Voted "Do Pass" by the Standing Committee on Banking by a vote of 9 to 1.

This bill establishes the Civil Litigation Funding Act that requires all civil litigation fundings to meet certain specified requirements. The civil litigation funding company must provide the consumer's attorney with a written notification of the funding provided to the consumer within three business days of the funding date. A civil litigation funding company is prohibited from specified activities and must require the contracted amount to be paid to the company to be set as a predetermined amount based on intervals of time from the funding date through the resolution date and not be determined as a percentage of the recovery from the legal claim. The company cannot impose a charge greater than 21% of the funded amount annually. A funding contract cannot be valid if it is written for a time period of more than 30 months and cannot be automatically renewed. All civil litigation funding contracts must contain certain disclosures and, unless otherwise specified, the disclosures must be typed in at least 12-point bold-type font and be placed clearly and conspicuously within the contract as specified.

These provisions must not be construed to restrict the exercise of powers or the performance of the duties of the Missouri Attorney General that he or she is authorized to exercise or perform by law. If a court determines that a civil litigation funding company has intentionally violated these provisions with regard to a specific civil litigation funding, the company must only be entitled to recover the funded amount provided to the consumer in the specific civil litigation funding and cannot be entitled to any additional charges.

An attorney or law firm retained by the consumer in the legal claim must not have a financial interest in the civil litigation funding company offering civil litigation funding to that consumer. Any attorney who has referred the consumer to his or her retained attorney must not have a financial interest in the civil litigation funding company offering civil litigation funding to that consumer.

Any communication between the consumer's attorney in the legal claim and the civil litigation funding company as it pertains to the civil litigation funding cannot limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

A civil litigation funding company may not engage in the business of civil litigation funding in this state unless it has first registered in the manner prescribed by the Department of Insurance, Financial Institutions and Professional Registration and contains the information the department requires to make an evaluation of the character and fitness of the applicant company. The initial application must be accompanied by a \$500 fee. A renewal registration must include a \$200 fee. A registration must be renewed every two years and expires on September 30.

Upon investigation, the department may issue a certificate of registration if it finds that the character and fitness of the applicant company along with the officers and directors of the applicant company warrant the belief that the company will be operated honestly and fairly within the purposes of these provisions.

If a bond is required by the department, each registrant must, at the time of filing the application, file with the department a bond satisfactory to the department in an amount not to exceed \$50,000. In lieu of the bond, at the option of the registrant, the registrant may post an irrevocable letter of credit. The terms of the bond must run concurrent with the period of time during which the registration will be in effect.

Upon written request, the applicant is entitled to a hearing if the department has notified the applicant in writing that the application has been denied or if the department has not issued a registration within 60 days after the application was filed. A request for a hearing must not be made more than 15 days after the department has mailed a written notice to the applicant that the application has been denied and stating in substance the department's findings supporting denial of the application.

A civil litigation funding company that registered with the department between the effective date of these provisions and six months thereafter may engage in civil litigation funding while the company's registration is waiting approval by the department. All funding agreements prior to the effective date of these provisions are not subject to the terms of these provisions.

A civil litigation funding company is prohibited from using any form of civil litigation funding contract in this state unless it has been filed with the department in accordance with the filing procedures set forth by the department.

PROPONENTS: Supporters say that there needs to be a cap on these settlement payouts. Companies are getting large interest rates on these payouts and the person who receives the money is getting

gouged.

Testifying for the bill were Representative Haahr; David Winton; Missouri Chamber of Commerce and Industry; and National Federation of Independent Business.

OPPONENTS: Those who oppose the bill say that in order to stay in business companies must charge high rates of interest. If there is a cap implemented as what is suggested in this bill they would no longer be able to conduct business in Missouri.

Testifying against the bill was Eric Schuller, Oasis Legal Finance and Kelly Gilroy, American Legal Finance Association.