

FIRST REGULAR SESSION

# HOUSE BILL NO. 512

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HAAHR.

1315H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To amend chapter 436, RSMo, by adding thereto ten new sections relating to the civil litigation funding act.

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*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  
2 known as sections 436.550, 436.552, 436.554, 436.556, 436.558, 436.560, 436.562, 436.566,  
3 436.568, 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 Litigation Funding 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 litigation funding;

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

13 (3) “Civil litigation funding”, a nonrecourse transaction in which a civil litigation  
14 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.

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

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

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

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

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

23 b. To which a civil litigation funding company grants a security interest or  
24 transfers any rights or interest in a civil litigation funding arrangement; or

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

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

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

28 (b) Has a legal claim in Missouri;

29 (6) "Funded amount", the amount of moneys provided to or on behalf of the  
30 consumer in the civil litigation funding arrangement;

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

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

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

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

436.554. 1. All civil litigation 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 litigation 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;

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

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

20 2. The civil litigation funding company shall provide the consumer's attorney with  
21 a written notification of the civil litigation funding provided to the consumer within three  
22 business days of the funding date by way of postal mail, courier service, facsimile, or  
23 electronic means.

**436.556. A civil litigation 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) Advertise materially false or misleading information regarding its products or  
9 services;

10 (4) Refer, in furtherance of an initial litigation 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 litigation funding company's  
20 entire funded amount and contracted charges, unless a lesser amount is otherwise agreed  
21 to in writing by the civil litigation funding companies, except that multiple companies may

22 agree to contemporaneously provide funding to a consumer provided that the consumer  
 23 and the consumer’s attorney consent to the arrangement in writing;

24 (7) Receive any right to or 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) Pay or offer to pay for court costs, filing fees, or attorneys’ fees either during  
 28 or after the resolution of the legal claim, using funds from the civil litigation funding  
 29 transaction.

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

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

7 3. No civil litigation funding contract shall be valid if written for a time period  
 8 greater than thirty months. No civil litigation funding contract shall be automatically  
 9 renewed.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 2. If a court of competent jurisdiction determines that a civil litigation funding  
5 company has intentionally violated the provisions of this statute with regard to a specific

6 civil litigation funding, the civil litigation funding company shall be entitled to recover only  
7 the funded amount provided to the consumer in such specific civil litigation funding and  
8 shall not be entitled to any additional charges.

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

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

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

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

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

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

25 registrant under and by virtue of sections 436.550 to 436.570 during the period for which  
26 the bond is given.

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

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

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

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

37 6. Notwithstanding the prior approval requirement of subsection 1 of this section,  
38 a civil litigation funding company that registered with the department of insurance,  
39 financial institutions and professional registration between the effective date of sections  
40 436.550 to 436.570 and six months thereafter may engage in civil litigation funding while  
41 the company's registration is awaiting approval by the department. All funding  
42 agreements prior to the effective date of sections 436.550 to 436.570 are not subject to the  
43 terms of sections 436.550 to 436.570.

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

48 8. The department of insurance, financial institutions and professional registration  
49 shall have the authority to enforce the provisions of sections 436.550 to 436.570 and to  
50 promulgate rules and regulations to implement the provisions of sections 436.550 to  
51 436.570. Any rule or portion of a rule, as that term is defined in section 536.010, that is  
52 created under the authority delegated in this section shall become effective only if it  
53 complies with and is subject to all of the provisions of chapter 536 and, if applicable,  
54 section 536.028. This section and chapter 536 are nonseverable, and if any of the powers  
55 vested with the general assembly pursuant to chapter 536 to review, to delay the effective  
56 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the  
57 grant of rulemaking authority and any rule proposed or adopted after August 28, 2015,  
58 shall be invalid and void.

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