

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Substitute for Senate Bill No. 833, Page 12, Section 408.830, Line 3,
2 by inserting immediately after all of said section and line the following:

3
4 "436.550. Sections 436.550 to 436.570 shall be known and may be cited as the "Civil
5 Litigation Funding Act".

6 436.552. 1. As used in sections 436.550 to 436.570, the following terms mean:

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

13 (2) "Charges", the amount of money to be paid to the civil litigation funding company by or
14 on behalf of the consumer, above the funded amount provided by or on behalf of the company to a
15 Missouri consumer under this act. Charges include all administrative, origination, underwriting, and
16 other fees, no matter how denominated;

17 (3) "Civil litigation funding", a nonrecourse transaction in which a civil litigation funding
18 company purchases and a consumer assigns to the company a contingent right to receive an amount
19 of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's
20 legal claim;

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

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

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

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

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

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

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

30 (a) The person resides or is domiciled in Missouri; or

31 (b) The legal claim arose in Missouri;

32 (6) "Funded amount", the amount of moneys provided to or on behalf of the consumer in
33 the civil litigation funding transaction;

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

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1 (8) “Immediate family member”, a parent; sibling; child by blood, adoption, or marriage;
 2 spouse; grandparent; or grandchild;

3 (9) “Legal claim”, a bona fide civil claim or cause of action, any alternative dispute
 4 resolution proceeding, or any administrative proceeding before any agency or instrumentality of this
 5 state;

6 (10) “Resolution date”, the date the amount funded to the consumer plus the agreed upon
 7 charges are delivered to the civil litigation funding company.

8 436.554. 1. All civil litigation transactions shall be covered by contracts between the civil
 9 litigation funding company and the consumer. All such contracts shall meet the following
 10 requirements:

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

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

15 (a) Returns to the civil litigation funding company the full amount of the disbursed funds by
 16 delivering the company’s uncashed check to the company’s office in person; or

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

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

22 (4) The contract shall require the consumer to give nonrevocable written direction to his or
 23 her attorney requiring the attorney to notify the civil litigation funding company when the legal
 24 claim has been resolved. Once the civil litigation funding company confirms in writing the amount
 25 due under the contract, the consumer’s attorney shall pay the civil litigation funding company from
 26 the proceeds of the resolution of the legal claim the amount due within ten business days.

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

30 436.556. A civil litigation funding company shall not:

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

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

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

37 (4) Refer, in furtherance of an initial litigation funding, a customer or potential customer to
 38 a specific attorney, law firm, medical provider, chiropractor, or physical therapist or any of their
 39 employees. However, if a customer needs legal representation, the company may refer the customer
 40 to a local or state bar association referral service;

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

42 (6) Knowingly provide funding to a consumer who has previously assigned or sold a portion
 43 of the consumer’s right to proceeds from his or her legal claim without first making payment to or
 44 purchasing a prior unsatisfied civil litigation funding company’s entire funded amount and
 45 contracted charges unless a lesser amount is otherwise agreed to in writing by the civil litigation
 46 funding companies. However, multiple companies may agree to contemporaneously provide
 47 funding to a consumer, provided that the consumer and the consumer’s attorney consent to the
 48 arrangement in writing;

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

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

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

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

12 3. All civil litigation funding agreements shall stop accruing fees and interest thirty months
13 after the funding date such that the outstanding balance of any civil litigation funding contract on
14 such date shall constitute a cap on the loan and all fees accrued. No civil litigation funding contract
15 shall incorporate outstanding funds, in whole or in part, from a previous civil litigation funding
16 contract into a new civil litigation funding contract.

17 436.560. All civil litigation funding contracts shall contain the disclosures specified in this
18 section, which shall constitute material terms of the contract. Unless otherwise specified, the
19 disclosures shall be typed in at least twelve-point bold-type font and be placed clearly and
20 conspicuously within the contract, as follows:

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

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

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

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

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

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

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

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

40 (3) Within the body of the contract, language specifying:

41 (a) The civil litigation funding company shall have no role in deciding whether, when, or
42 for how much the legal claim is settled;

43 (b) The consumer and consumer's attorney shall notify the company of whether the
44 outcome of the legal claim will be by settlement or by adjudication prior to the resolution date; and

45 (c) The company may seek updated information about the status of the legal claim, but in no
46 event shall the company interfere with the independent professional judgment of the attorney in the
47 handling of the legal claim or any settlement thereof;

48 (4) Within the body of the contract, in all capital letters in at least twelve-point bold-type

1 font contained within a box: "THE FUNDED AMOUNT AND AGREED UPON CHARGES
2 SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE
3 PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR
4 LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE CIVIL LITIGATION
5 FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL
6 CLAIM UNLESS YOU OR YOUR ATTORNEY HAS VIOLATED ANY MATERIAL TERM OF
7 THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST THE CIVIL
8 LITIGATION FUNDING COMPANY."; and

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

16 436.562. 1. Nothing in this act shall be construed to restrict the exercise of powers or the
17 performance of the duties of the state attorney general, which he or she is authorized to exercise or
18 perform by law.

19 2. If a court of competent jurisdiction determines that a civil litigation funding company has
20 intentionally violated the provisions of this statute with regard to a specific civil litigation funding,
21 the civil litigation funding company shall be entitled to recover only the funded amount provided to
22 the consumer in such specific civil litigation funding and shall not be entitled to any additional
23 charges.

24 436.566. No attorney or law firm retained by the consumer in the legal claim shall have a
25 financial interest in the civil litigation funding company offering civil litigation funding to that
26 consumer. Additionally, no attorney who referred the consumer to his or her retained attorney shall
27 have a financial interest in the civil litigation funding company offering civil litigation funding to
28 that consumer.

29 436.568. No communication between the consumer's attorney in the legal claim and the
30 civil litigation funding company as it pertains to the civil litigation funding shall limit, waive, or
31 abrogate the scope or nature of any statutory or common-law privilege, including the work-product
32 doctrine and the attorney-client privilege.

33 436.570. 1. No civil litigation funding company shall engage in the business of civil
34 litigation funding in this state unless the company has first registered under this act.

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

41 3. No certificate of registration shall be issued unless the department of insurance, financial
42 institutions and professional registration, upon investigation, finds that the character and fitness of
43 the applicant company, and of the officers and directors thereof, are such as to warrant belief that
44 the business will be operated honestly and fairly within the purposes of this act.

45 4. Every registrant shall also, at the time of filing such application, file with the department
46 of insurance, financial institutions and professional registration, if the department so requires, a
47 bond satisfactory to the department in an amount not to exceed fifty thousand dollars. In lieu of the
48 bond, at the option of the registrant, the registrant may post an irrevocable letter of credit. The

1 terms of the bond shall run concurrent with the period of time during which the registration will be
2 in effect. The bond shall provide that the registrant will faithfully conform to and abide by the
3 provisions of this act and to all rules lawfully made by the administrator under this act and to any
4 such person or persons any and all amounts of money that may become due or owing to the state or
5 to such person or persons from the registrant under and by virtue of this act during the period for
6 which the bond is given.

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

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

11 (2) The department has not issued a registration within sixty days of the date the application
12 for the registration was filed.

13
14 A request for a hearing shall not be made more than fifteen days after the department has mailed a
15 written notice to the applicant that the application has been denied and that states in substance the
16 department's findings in support of denial of the application.

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

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

26 8. The department of insurance, financial institutions and professional registration shall
27 have the authority to enforce the provisions of this act and to promulgate rules and regulations to
28 implement the provisions of this act. Any rule or portion of a rule, as that term is defined in section
29 536.010, that is created under the authority delegated in this section shall become effective only if it
30 complies with and is subject to all of the provisions of chapter 536 and, if applicable, section
31 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the
32 general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and
33 annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any
34 rule proposed or adopted after August 28, 2016, shall be invalid and void."; and

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36 Further amend said bill by amending the title, enacting clause, and intersectional references
37 accordingly.