

# HOUSE RESEARCH

## Bill Summary

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### Overview

This bill regulates funding arrangements in which a consumer who is represented by an attorney in suing someone on a civil claim (assume it is a tort claim resulting from injuries in an auto accident) can borrow money from a company that provides funds to consumers who have civil claims in exchange for a promise to pay the company an amount that exceeds the amount borrowed, but only out of what the consumer ultimately ends up recovering on the tort claim, if anything. This is called “non-recourse funding,” because the lender does not have recourse to collect repayment from the consumer in general, but only out of what the consumer receives in the future from the tort claim, which could be called a “contingent repayment.” The consumer may use the money obtained from the lender to cover living expenses, medical costs, or whatever else the consumer chooses, other than the cost of the litigation. This bill requires companies that provide this type of funding in Minnesota to be registered with the commissioner of commerce. All sections of the bill are effective January 1, 2011.

#### Section

- 1 Citation.** Calls this new chapter of law “The Minnesota Nonrecourse Civil Litigation Funding Act.”
- 2 Definitions.** Defines the terms “civil litigation funding company,” “commissioner,” “consumer,” “contract,” and “nonrecourse civil litigation funding.”

### 3 **Registration.**

**Subd. 1. Registration required.** Prohibits anyone from being in the business of nonrecourse civil litigation funding in Minnesota without being registered with the commissioner of commerce.

**Subd. 2. Contents.** Lists the information that the registration form must include. Requires the commissioner to make public the registrant's name, contact information, and agent for service of process in Minnesota. Permits the commissioner to suspend a registration if the renewal registration application is more than 30 days late.

**Subd. 3. Registration fee.** Requires the company to pay an initial registration fee of \$1,000, and an annual renewal fee after that of \$500, to the commissioner. Requires that it be deposited in an account in the special revenue fund and appropriates it to the commissioner for purposes of this act.

4 **Recordkeeping.** Requires the company to keep records of all of its transactions involving Minnesota consumers, and requires that the company keep them for at least two years after the transaction is completely finished. Requires a company that stops doing business here to continue to comply with this recordkeeping requirement at least until it proves to the commissioner that it has satisfied all of its obligations to customers in this state.

5 **Contract provisions.** (a) Specifies requirements for contracts for nonrecourse civil litigation funding arrangements in this state.

(b) Requires that the contract be completely filled in when signed and disclose the dollar amount to be provided to the consumer, all fees charged to the consumer, the total amount to be repaid by the consumer in six-month intervals for 36 months including all fees, and the annual percentage rate (APR) calculated as described.

(c) Requires that the contract allow the consumer a five-day right to cancel the contract after signing it, and tells how to do that, including return of any money already received.

(d) The contract must provide that the company will not interfere with decisions the consumer and the consumer's attorney make on how to handle the litigation.

(e) Requires that the contract be initialed by the consumer on each page.

(f) Requires that the contract contain a statement suggesting that the consumer consult an attorney and/or other types of advisors before signing the contract. Requires that the consumer state that the consumer is not relying in signing the contract on certain types of non-litigation advice from the attorney handling the civil litigation claim. Advises the consumer that the funds must not be used to pay the costs of litigation of the claim.

(g) Requires that the attorney handling the civil litigation claim sign a written acknowledgment that: (1) the attorney has reviewed the contract and determined that all fees and costs related to it have been disclosed including the "annualized rate of return" used to calculate the consumer's repayment obligation; (2) the attorney is handling the civil claim on a contingency fee basis; (3) all money received from the litigation will be disbursed from the attorney's trust fund or from a settlement trust; and (4) the attorney is following the client's written instructions in regard to the nonrecourse civil litigation

funding.

(h) Requires a specified statement to the consumer that the consumer will not have to repay the civil litigation funding company anything in excess of what the consumer recovers in the lawsuit, if anything.

**6 Consumer protections.** (a) Requires that the contract be written in English and in the language in which the oral negotiations were conducted.

(b) If there is a dispute between the consumer and the civil litigation funding company, the duties of the attorney representing the consumer in the civil litigation are no greater than they are under the Minnesota rules of professional conduct (which govern the ethical responsibilities of attorneys).

(c) Provides that the civil litigation funding company must not pay, or accept payment of, anything to or from any attorney, medical provider, or employee of any of them as compensation for a referral related to the civil litigation funding transaction.

(d) Prohibits a civil litigation funding company from knowingly entering into a transaction with a consumer who has already entered into a similar agreement with another company, unless the company first buys out the prior company's interest.

(e) Prohibits the company from advertising false or misleading information regarding its product or services.

**7 Commissioner's enforcement powers.** Gives the commissioner the power to take enforcement action to enforce this chapter, including the commissioner's usual enforcement powers under chapter 45.