

A bill for an act
relating to commerce; regulating nonrecourse civil litigation funding transactions;
proposing coding for new law as Minnesota Statutes, chapter 80G.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[80G.01] CITATION.**

This chapter shall be known and may be cited as the "Minnesota Nonrecourse Civil
Litigation Funding Act."

EFFECTIVE DATE. This section is effective January 1, 2011, and applies to
nonrecourse civil litigation funding transactions entered into on or after that date.

Sec. 2. **[80G.02] DEFINITIONS.**

(a) For purposes of this chapter, the terms defined in this subdivision have the
meanings given.

(b) "Civil litigation funding company" means an individual or entity that enters into
a nonrecourse civil litigation funding transaction with a consumer.

(c) "Commissioner" means the commissioner of commerce.

(d) "Consumer" means an individual or entity residing or domiciled in Minnesota or
who elects to enter into a transaction under this chapter, whether in person or over the
Internet, by facsimile, or any other electronic means, and who has a pending civil claim or
action and is represented by an attorney in connection with that pending civil claim or
action at the time of receiving the nonrecourse civil litigation funding.

(e) "Contract" means a written agreement between a consumer and a civil litigation funding company in which the civil litigation funding company agrees to provide nonrecourse civil litigation funding to the consumer in compliance with this section.

(f) "Nonrecourse civil litigation funding" means a transaction in which:

(1) a civil litigation funding company purchases the right to receive an amount of the potential proceeds from a consumer who has a pending civil claim or action; and

(2) the return on investment to the civil litigation funding company is made only out of the proceeds, if any, of the realized settlement, judgment, award, or verdict the consumer may receive in the civil claim or action. For this purpose, the proceeds received by the consumer do not include attorney fees and reimbursements incurred by the consumer's attorney in connection with the civil claim or action, in accordance with the contingent fee agreement between the consumer and the consumer's attorney.

EFFECTIVE DATE. This section is effective January 1, 2011, and applies to nonrecourse civil litigation funding transactions entered into on or after that date.

Sec. 3. **[80G.03] REGISTRATION.**

Subdivision 1. Registration required. No person or entity may engage in the business of providing nonrecourse civil litigation funding in this state unless the person or entity is registered with the commissioner on a form prescribed by the commissioner.

Subd. 2. Contents. (a) A person or entity may register with the commissioner under this section by filing with the commissioner an initial registration, which must be updated annually thereafter and within 30 days of any change. The registration must include the following information:

(1) the registrant's name, any assumed names under which the registrant does business or intends to do business in this state, the principal office address, telephone number, and e-mail address;

(2) the name and address of the registrant's agent for service of process in this state, if other than the registrant;

(3) the names of the registrant's executive officer or officers who are directly responsible for the registrant's nonrecourse civil litigation funding business;

(4) the name, address, and telephone number of any administrator designated by the registrant as responsible for administration of the registrant's business in this state; and

(5) a copy of each contract and other form that the registrant proposes to use in this state.

(b) The commissioner must make the information in paragraph (a), clauses (1) and (2), available to the public.

(c) If a renewal registration is more than 30 days late, the commissioner may suspend the registration.

Subd. 3. **Registration fee.** The commissioner may charge the registrant a fee to offset the cost of registration and maintenance of records in the amount of \$...... annually. Fees received under this section must be deposited in an account in the special revenue fund and are appropriated to the commissioner of commerce for purposes of this chapter.

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Sec. 4. [80G.04] RECORD KEEPING.

(a) The registrant shall keep accurate accounts, books, and records concerning transactions regulated under this chapter. The records must include copies of all contracts; the name of each customer; and the dates, amounts, and descriptions of all funds provided to or received from customers, including funds provided or received through an attorney or other third party.

(b) The registrant shall retain all required records pertaining to each contract for at least two years after the contract has been fulfilled, terminated, or is otherwise no longer in effect. A registrant that discontinues doing business as a civil litigation funding company in this state shall maintain its records as required under this section until it furnishes to the commissioner satisfactory proof that it has discharged all of its obligations to customers in this state.

EFFECTIVE DATE. This section is effective January 1, 2011, and applies to nonrecourse civil litigation funding transactions entered into on or after that date.

Sec. 5. [80G.05] CONTRACT PROVISIONS.

(a) All contracts for nonrecourse civil litigation funding must comply with the requirements provided in this section.

(b) The contract must be completely filled in and contain on the front page, appropriately headed and in at least 12-point bold type, the following disclosures:

(1) the total dollar amount to be funded to the consumer;

(2) an itemization of all fees related to the contract;

(3) the total dollar amount to be repaid by the consumer, in six-month intervals for 36 months, and including all fees; and

(4) the annual percentage rate return, calculated as of the last day of each six-month interval, including frequency of compounding.

(c) The contract must provide that the consumer may cancel the contract within five business days following the consumer's receipt of funds, without penalty or further obligation. The contract must contain the following notice written in a clear and conspicuous manner: "Consumer's right to cancellation: You may cancel this contract without penalty or further obligation within five business days from the date you receive funding from [insert name of civil litigation funding company]." The contract must also specify that in order for the cancellation to be effective, the consumer must either:

(1) return to the civil litigation funding company the full amount of disbursed funds by delivering the civil litigation funding company's uncashed check to the civil litigation company's offices in person within five business days of the disbursement of funds; or

(2) mail a notice of cancellation and include in that mailing a return of the full amount of disbursement funds in the form of the civil litigation funding company's uncashed check, or a registered or certified check or money order, by insured, registered, or certified United States mail, postmarked within five business days after receiving funds from the civil litigation funding company, to the address specified in the contract for the cancellation.

(d) The contract must contain the following statement in at least 12-point boldface type: "The civil litigation funding company agrees that it shall have no right to and will not make any decisions with respect to the conduct of the underlying civil action or claim or any settlement or resolution of it and that the right to make those decisions remains solely with you and your attorney in the civil action or claim."

(e) The contract must be initialed by the consumer on each page.

(f) The contract must contain the following statement in at least 12-point boldface type located immediately above the place on the contract where the consumer's signature is required: "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 this 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 benefit planning, or financial professional. You acknowledge that your attorney in the civil action or claim has provided no tax, public or private benefit planning, or financial advice regarding this transaction."

(g) The contract must contain a written acknowledgment by the attorney representing the consumer in the civil action or claim that states the following:

(1) the attorney representing the consumer in the civil action has reviewed the contract and determined that all costs and fees have been disclosed, including the annualized rate of return applied to calculate the amount to be paid by the consumer;

(2) the attorney representing the consumer in the civil action or claim is being paid on a contingency basis under a written fee agreement;

(3) all proceeds of the civil litigation will be disbursed via the trust account of the attorney representing the consumer in the civil action or claim or via a settlement fund established to receive the proceeds of the civil litigation from the defendant on behalf of the consumer; and

(4) the attorney representing the consumer in the civil action or claim is following the written instructions of the consumer with regard to the nonrecourse civil litigation funding.

(h) All contracts with the consumer must have plain language, in a box with 15-point font, stating the following in capitalized letters: "IF THERE IS NO RECOVERY OF ANY MONEY FROM YOUR LEGAL CLAIM OR IF THERE IS NOT ENOUGH MONEY TO PAY THE CIVIL LITIGATION FUNDING COMPANY BACK IN FULL, YOU WILL NOT OWE THE CIVIL LITIGATION COMPANY ANYTHING IN EXCESS OF YOUR RECOVERY UNLESS YOU HAVE VIOLATED THIS AGREEMENT."

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Sec. 6. [80G.06] CONSUMER PROTECTIONS.

(a) Upon written request of a non-English speaking consumer, the contract must be written in the same language in which the oral negotiations are conducted between the civil litigation funding company and the consumer.

(b) If a dispute arises between the consumer and the civil litigation funding company concerning the contract for nonrecourse civil litigation funding, the responsibilities of the attorney representing the consumer in the civil action or claim shall be no greater than the attorney's responsibilities under the Minnesota rules of professional conduct.

(c) The civil litigation funding company shall not offer to pay or pay commissions, referral fees, or rebates to any attorney or employee of a law firm or to any medical provider, chiropractor, or physical therapist or their employees for referring a consumer to the civil litigation funding company. The civil litigation funding company shall not accept any commissions, referral fees, or rebates from any attorney or employee of a law firm or any medical provider, chiropractor, or physical therapist or their employees.

(d) The civil litigation funding company shall not knowingly provide funding to a consumer who has previously sold and assigned an amount of the consumer's potential proceeds from the consumer's legal claim to another civil litigation funding company without first buying out that civil litigation funding company's entire accrued

balance, unless otherwise agreed in writing by the civil litigation funding company and the consumer.

(e) The civil litigation funding company shall not advertise false or intentionally misleading information regarding its product or services.

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Sec. 7. **[80G.07] COMMISSIONER'S POWERS AND DUTIES.**

Subdivision 1. **Examination and compliance powers.** The commissioner may conduct examinations of civil litigation funding companies or other persons to enforce this chapter and protect consumers in this state. Upon request of the commissioner, a civil litigation funding company shall make available to the commissioner all accounts, books, and records concerning nonrecourse civil litigation funding provided by a civil litigation funding company and transactions regulated under this chapter that are necessary to enable the commissioner to reasonably determine compliance or noncompliance with this chapter.

Subd. 2. **Enforcement authority.** The commissioner may take action that is necessary or appropriate to enforce the provisions of this chapter and the commissioner's rules and orders and to protect consumers in this state. The commissioner has the enforcement authority in chapter 45 available to enforce the provisions of this chapter and any rules adopted under it.

EFFECTIVE DATE. This section is effective January 1, 2011, and applies to nonrecourse civil litigation funding transactions entered into on or after that date.