

SENATE BILL 831

D3, I3

0lr1785
CF 0lr2643

By: **Senators Forehand and Miller**

Introduced and read first time: February 10, 2010

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Civil Litigation Funding**

3 FOR the purpose of establishing that the contingent right to receive an amount of the
4 potential proceeds of a certain legal claim is assignable and that an assignment
5 of that right is valid for certain purposes; establishing certain requirements for
6 a contract for nonrecourse civil litigation funding; establishing that the
7 responsibilities of a certain attorney if a certain dispute arises shall be
8 consistent with the Maryland Rules of Professional Responsibility; establishing
9 that certain communications do not affect certain evidentiary privileges;
10 prohibiting a civil litigation funding company from assessing fees for a certain
11 period; limiting the compounding of certain fees; requiring a civil litigation
12 funding company, in calculating the annual percentage fee or rate of return, to
13 include certain charges and compute the rate based on a certain amount;
14 establishing certain prohibitions; requiring each civil litigation funding
15 company to be licensed by the Commissioner of Financial Regulation in
16 accordance with certain provisions of law; establishing that, with certain
17 exceptions, certain provisions of law apply to a civil litigation funding company;
18 requiring each licensed civil litigation funding company to report annually
19 certain information to the Commissioner; requiring the Commissioner to adopt
20 certain regulations and submit a certain annual report to the General
21 Assembly; providing for the construction of this Act; defining certain terms; and
22 generally relating to civil litigation funding.

23 BY adding to

24 Article – Courts and Judicial Proceedings

25 Section 5–1201 through 5–1208 to be under the new subtitle “Subtitle 12. Civil
26 Litigation Funding”

27 Annotated Code of Maryland

28 (2006 Replacement Volume and 2009 Supplement)

29 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Financial Institutions
2 Section 11–202.1
3 Annotated Code of Maryland
4 (2003 Replacement Volume and 2009 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Courts and Judicial Proceedings**

8 **SUBTITLE 12. CIVIL LITIGATION FUNDING.**

9 **5–1201.**

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
11 INDICATED.

12 (B) “CIVIL LITIGATION FUNDING COMPANY” MEANS A PERSON THAT
13 ENTERS INTO A NONRECOURSE CIVIL LITIGATION FUNDING TRANSACTION WITH
14 A CONSUMER.

15 (C) “COMMISSIONER” MEANS THE COMMISSIONER OF FINANCIAL
16 REGULATION.

17 (D) “CONSUMER” MEANS A PERSON WHO:

18 (1) RESIDES OR IS DOMICILED IN THE STATE; AND

19 (2) ELECTS TO ENTER INTO A TRANSACTION UNDER THIS
20 SUBTITLE, WHETHER IN PERSON, OVER THE INTERNET, BY FACSIMILE, OR BY
21 ANY OTHER ELECTRONIC MEANS.

22 (E) “LEGAL CLAIM” MEANS A CIVIL OR STATUTORY CLAIM OR CAUSE OF
23 ACTION.

24 (F) “NONRECOURSE CIVIL LITIGATION FUNDING” MEANS A
25 TRANSACTION IN WHICH A CIVIL LITIGATION FUNDING COMPANY PURCHASES,
26 AND A CONSUMER ASSIGNS TO THE CIVIL LITIGATION FUNDING COMPANY, THE
27 CONTINGENT RIGHT TO RECEIVE AN AMOUNT OF THE POTENTIAL PROCEEDS OF
28 A SETTLEMENT, JUDGMENT, AWARD, OR VERDICT OBTAINED IN THE
29 CONSUMER’S LEGAL CLAIM.

30 **5–1202.**

1 **THE CONTINGENT RIGHT TO RECEIVE AN AMOUNT OF THE POTENTIAL**
2 **PROCEEDS OF A LEGAL CLAIM IS ASSIGNABLE AND AN ASSIGNMENT OF THAT**
3 **RIGHT IS VALID FOR THE PURPOSES OF OBTAINING FUNDING FROM A CIVIL**
4 **LITIGATION FUNDING COMPANY UNDER THIS SUBTITLE.**

5 **5-1203.**

6 **(A) EACH CONTRACT FOR NONRECOURSE CIVIL LITIGATION FUNDING**
7 **SHALL:**

8 **(1) CONTAIN ON THE FRONT PAGE, WITH AN APPROPRIATE**
9 **HEADING AND IN AT LEAST 14 POINT BOLDFACE TYPE, THE FOLLOWING**
10 **DISCLOSURES:**

11 **(I) THE TOTAL DOLLAR AMOUNT OF FUNDS TO BE PAID TO**
12 **THE CONSUMER;**

13 **(II) AN ITEMIZATION OF ONETIME FEES; AND**

14 **(III) THE TOTAL DOLLAR AMOUNT BEING ASSIGNED BY THE**
15 **CONSUMER TO THE CIVIL LITIGATION FUNDING COMPANY, SET FORTH IN**
16 **6-MONTH INTERVALS FOR 42 MONTHS;**

17 **(2) (I) PROVIDE THAT THE CONSUMER MAY CANCEL THE**
18 **CONTRACT WITHIN 5 BUSINESS DAYS AFTER THE CONSUMER RECEIVES FUNDS**
19 **FROM THE CIVIL LITIGATION FUNDING COMPANY, WITHOUT PENALTY OR**
20 **FURTHER OBLIGATION;**

21 **(II) CONTAIN THE FOLLOWING NOTICE WRITTEN IN AT**
22 **LEAST 14 POINT BOLDFACE TYPE:**

23 **“CONSUMER’S RIGHT TO CANCELLATION**

24 **YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY OR FURTHER**
25 **OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDS**
26 **FROM (INSERT NAME OF CIVIL LITIGATION FUNDING COMPANY).”;** AND

27 **(III) SPECIFY THAT IN ORDER FOR THE CANCELLATION TO**
28 **BE EFFECTIVE, THE CONSUMER MUST RETURN TO THE CIVIL LITIGATION**
29 **FUNDING COMPANY THE FULL AMOUNT OF DISBURSED FUNDS BY:**

30 **1. DELIVERING THE CIVIL LITIGATION FUNDING**
31 **COMPANY’S UNCASHED CHECK TO THE CIVIL LITIGATION FUNDING COMPANY’S**

1 OFFICES IN PERSON, WITHIN 5 BUSINESS DAYS AFTER THE DISBURSEMENT OF
2 THE FUNDS; OR

3 2. MAILING A NOTICE OF CANCELLATION
4 ACCOMPANIED BY THE FULL AMOUNT OF DISBURSED FUNDS IN THE FORM OF
5 THE CIVIL LITIGATION FUNDING COMPANY'S UNCASHED CHECK, OR A
6 REGISTERED OR CERTIFIED CHECK OR MONEY ORDER, BY INSURED,
7 REGISTERED, OR CERTIFIED UNITED STATES MAIL, POSTMARKED WITHIN 5
8 BUSINESS DAYS AFTER THE RECEIPT OF THE FUNDS FROM THE CIVIL
9 LITIGATION FUNDING COMPANY, AT THE ADDRESS SPECIFIED IN THE CONTRACT
10 FOR CANCELLATION;

11 (3) CONTAIN THE FOLLOWING STATEMENT IN AT LEAST 14 POINT
12 BOLDFACE TYPE:

13 "(INSERT NAME OF CIVIL LITIGATION FUNDING COMPANY) AGREES THAT
14 IT SHALL HAVE NO RIGHT TO, AND WILL NOT MAKE ANY DECISIONS WITH
15 RESPECT TO THE CONDUCT OF, THE UNDERLYING LEGAL CLAIM OR ANY
16 SETTLEMENT OR RESOLUTION OF THE LEGAL CLAIM AND THAT THE RIGHT TO
17 MAKE THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN
18 THE LEGAL CLAIM.

19 (INSERT NAME OF CIVIL LITIGATION FUNDING COMPANY) AGREES THAT IT
20 SHALL ONLY ACCEPT AN ASSIGNMENT OF AN AMOUNT OF THE POTENTIAL
21 PROCEEDS, RATHER THAN AN ASSIGNMENT OF THE CONSUMER'S LEGAL CLAIM.
22 (INSERT NAME OF CIVIL LITIGATION FUNDING COMPANY) AGREES THAT IT
23 SHALL HAVE NO RIGHT TO PURSUE THE LEGAL CLAIM ON BEHALF OF, OR
24 INSTEAD OF, THE CONSUMER.";

25 (4) CONTAIN THE FOLLOWING STATEMENT IN A BOX, IN AT LEAST
26 15 POINT BOLDFACE TYPE AND IN ALL CAPITALIZED LETTERS:

27 "THE CIVIL LITIGATION FUNDING COMPANY SHALL BE PAID ONLY FROM
28 THE PROCEEDS OF THE LEGAL CLAIM. YOU WILL NOT OWE THE CIVIL
29 LITIGATION FUNDING COMPANY ANYTHING IF THERE IS NOT ENOUGH MONEY TO
30 SATISFY THE PORTION ASSIGNED TO THE CIVIL LITIGATION FUNDING COMPANY
31 IN FULL UNLESS YOU VIOLATE THE TERMS OF THIS AGREEMENT. IF THERE ARE
32 INSUFFICIENT PROCEEDS TO PAY THE CIVIL LITIGATION FUNDING COMPANY IN
33 FULL, THE CIVIL LITIGATION FUNDING COMPANY SHALL BE PAID ONLY TO THE
34 EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM THE LEGAL CLAIM
35 UNLESS YOU VIOLATE THE TERMS OF THIS AGREEMENT.";

1 **(5) CONTAIN THE FOLLOWING STATEMENT IN AT LEAST 14 POINT**
2 **BOLDFACE TYPE LOCATED IMMEDIATELY ABOVE THE SPACE WHERE THE**
3 **CONSUMER’S SIGNATURE IS REQUIRED:**

4 **“DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT COMPLETELY OR**
5 **IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COMPLETELY**
6 **FILLED-IN COPY OF THIS CONTRACT. BEFORE YOU SIGN THIS AGREEMENT YOU**
7 **SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE**
8 **CIRCUMSTANCES, YOU MAY WANT TO CONSULT A TAX, PUBLIC OR PRIVATE**
9 **BENEFIT PLANNING, OR FINANCIAL PROFESSIONAL. YOU ACKNOWLEDGE THAT**
10 **YOUR ATTORNEY IN THE LEGAL CLAIM HAS PROVIDED NO TAX, PUBLIC OR**
11 **PRIVATE BENEFIT, OR FINANCIAL PLANNING REGARDING THIS TRANSACTION.”;**

12 **(6) CONTAIN AN ACKNOWLEDGMENT BY THE CONSUMER THAT**
13 **THE CONSUMER HAS REVIEWED THE CONTRACT IN ITS ENTIRETY; AND**

14 **(7) CONTAIN A WRITTEN ACKNOWLEDGMENT BY THE ATTORNEY**
15 **REPRESENTING THE CONSUMER IN THE LEGAL CLAIM THAT:**

16 **(I) THE ATTORNEY IS BEING PAID ON A CONTINGENCY**
17 **BASIS IN ACCORDANCE WITH A WRITTEN FEE AGREEMENT;**

18 **(II) ALL PROCEEDS OF THE LEGAL CLAIM WILL BE**
19 **DISBURSED THROUGH THE TRUST ACCOUNT OF THE ATTORNEY OR THROUGH A**
20 **SETTLEMENT FUND ESTABLISHED BY THE DEFENDANT IN THE LEGAL CLAIM TO**
21 **RECEIVE AND DISTRIBUTE THE PROCEEDS OF THE LEGAL CLAIM ON BEHALF OF**
22 **THE CONSUMER; AND**

23 **(III) THE ATTORNEY HAS REVIEWED THE CONTRACT AND**
24 **WILL FOLLOW THE WRITTEN INSTRUCTIONS OF THE CONSUMER PROVIDED TO**
25 **THE ATTORNEY WHEN THE FUNDS ARE OBTAINED BY THE CONSUMER FROM THE**
26 **CIVIL LITIGATION FUNDING COMPANY WITH REGARD TO REMITTING PAYMENT**
27 **TO THE CIVIL LITIGATION FUNDING COMPANY ON THE RESOLUTION OF THE**
28 **LEGAL CLAIM.**

29 **(B) (1) IN THIS SUBSECTION, “PRINCIPAL TERMS” INCLUDES ALL**
30 **ITEMS REQUIRED TO BE DISCLOSED UNDER THIS SUBTITLE.**

31 **(2) ON THE WRITTEN REQUEST OF A SPANISH-SPEAKING**
32 **CONSUMER, THE PRINCIPAL TERMS OF THE CONTRACT SHALL BE TRANSLATED**
33 **IN WRITING INTO SPANISH.**

34 **(3) THE CONSUMER SHALL SIGN THE TRANSLATED DOCUMENT**
35 **CONTAINING THE PRINCIPAL TERMS AND INITIAL EACH PAGE.**

1 **(4) THE TRANSLATOR OR LAWYER SHALL SIGN AN AFFIRMATION**
2 **CONFIRMING THAT THE PRINCIPAL TERMS HAVE BEEN PRESENTED TO THE**
3 **CONSUMER IN SPANISH AND ACKNOWLEDGED BY THE CONSUMER.**

4 **5-1204.**

5 **(A) IF A DISPUTE ARISES BETWEEN A CONSUMER AND A CIVIL**
6 **LITIGATION FUNDING COMPANY CONCERNING A CONTRACT FOR NONRECOURSE**
7 **CIVIL LITIGATION FUNDING, THE RESPONSIBILITIES OF THE ATTORNEY**
8 **REPRESENTING THE CONSUMER IN THE LEGAL CLAIM SHALL BE CONSISTENT**
9 **WITH THE ATTORNEY'S RESPONSIBILITIES UNDER THE MARYLAND RULES OF**
10 **PROFESSIONAL RESPONSIBILITY.**

11 **(B) A COMMUNICATION BETWEEN THE ATTORNEY REPRESENTING A**
12 **CONSUMER IN A LEGAL CLAIM AND A CIVIL LITIGATION FUNDING COMPANY**
13 **RELATING TO A LEGAL FUNDING AGREEMENT MAY NOT LIMIT, WAIVE, OR**
14 **ABROGATE THE SCOPE OR NATURE OF ANY STATUTORY OR COMMON-LAW**
15 **PRIVILEGE, INCLUDING THE WORK-PRODUCT DOCTRINE AND THE**
16 **ATTORNEY-CLIENT PRIVILEGE.**

17 **5-1205.**

18 **(A) A CIVIL LITIGATION FUNDING COMPANY MAY NOT ASSESS FEES FOR**
19 **ANY PERIOD EXCEEDING 42 MONTHS FROM THE DATE OF A CONTRACT WITH A**
20 **CONSUMER.**

21 **(B) FEES ASSESSED BY A CIVIL LITIGATION FUNDING COMPANY MAY**
22 **NOT COMPOUND MORE FREQUENTLY THAN EVERY 6 MONTHS FROM THE DATE**
23 **OF A CONTRACT WITH A CONSUMER.**

24 **(C) IN CALCULATING THE ANNUAL PERCENTAGE FEE OR RATE OF**
25 **RETURN, A CIVIL LITIGATION FUNDING COMPANY SHALL:**

26 **(1) INCLUDE ALL CHARGES PAYABLE DIRECTLY OR INDIRECTLY**
27 **BY THE CONSUMER; AND**

28 **(2) COMPUTE THE RATE BASED ONLY ON AMOUNTS ACTUALLY**
29 **RECEIVED BY A CONSUMER.**

30 **5-1206.**

31 **A CIVIL LITIGATION FUNDING COMPANY MAY NOT:**

1 **(1) ENTER INTO A CONTRACT FOR NONRECOURSE CIVIL**
2 **LITIGATION FUNDING WITH A CONSUMER UNLESS THE CONSUMER IS**
3 **REPRESENTED BY AN ATTORNEY;**

4 **(2) PAY OR OFFER TO PAY COMMISSIONS OR REFERRAL FEES TO**
5 **ANY ATTORNEY OR EMPLOYEE OF A LAW FIRM OR TO ANY MEDICAL PROVIDER,**
6 **CHIROPRACTOR, OR PHYSICAL THERAPIST OR THEIR EMPLOYEES FOR**
7 **REFERRING A CONSUMER TO THE CIVIL LITIGATION FUNDING COMPANY;**

8 **(3) ACCEPT ANY COMMISSIONS, REFERRAL FEES, OR REBATES**
9 **FROM ANY ATTORNEY OR EMPLOYEE OF A LAW FIRM OR ANY MEDICAL**
10 **PROVIDER, CHIROPRACTOR, OR PHYSICAL THERAPIST OR THEIR EMPLOYEES,**
11 **OTHER THAN THE AMOUNT THAT IS AGREED TO BE PAID TO THE CIVIL**
12 **LITIGATION FUNDING COMPANY OUT OF THE PROCEEDS OF THE LEGAL CLAIM**
13 **UNDER THE SIGNED CONTRACT BETWEEN THE CONSUMER AND THE CIVIL**
14 **LITIGATION FUNDING COMPANY;**

15 **(4) ADVERTISE FALSE OR INTENTIONALLY MISLEADING**
16 **INFORMATION REGARDING ITS PRODUCT OR SERVICES;**

17 **(5) UNLESS OTHERWISE AGREED IN WRITING BY THE CIVIL**
18 **LITIGATION FUNDING COMPANY AND THE CONSUMER, KNOWINGLY PROVIDE**
19 **FUNDING TO A CONSUMER WHO HAS PREVIOUSLY SOLD AND ASSIGNED AN**
20 **AMOUNT OF THE POTENTIAL PROCEEDS FROM THE CONSUMER'S LEGAL CLAIM**
21 **TO ANOTHER CIVIL LITIGATION FUNDING COMPANY WITHOUT FIRST BUYING**
22 **OUT THE OTHER CIVIL LITIGATION FUNDING COMPANY'S ENTIRE ACCRUED**
23 **BALANCE; OR**

24 **(6) OFFER SINGLE PREMIUM CREDIT LIFE, DISABILITY, OR**
25 **UNEMPLOYMENT INSURANCE THAT IS TO BE FINANCED THROUGH A CIVIL**
26 **LITIGATION FUNDING TRANSACTION.**

27 **5-1207.**

28 **(A) EACH NONRECOURSE CIVIL LITIGATION FUNDING COMPANY SHALL**
29 **BE LICENSED BY THE COMMISSIONER IN ACCORDANCE WITH TITLE 11,**
30 **SUBTITLE 2 OF THE FINANCIAL INSTITUTIONS ARTICLE.**

31 **(B) EACH LICENSED CIVIL LITIGATION FUNDING COMPANY SHALL**
32 **REPORT ANNUALLY THE FOLLOWING INFORMATION TO THE COMMISSIONER, IN**
33 **THE FORM PRESCRIBED BY THE COMMISSIONER:**

1 **(A) IN THIS SECTION, “CIVIL LITIGATION FUNDING COMPANY” AND**
2 **“NONRECOURSE CIVIL LITIGATION FUNDING” HAVE THE MEANINGS STATED IN §**
3 **5–1201 OF THE COURTS ARTICLE.**

4 **(B) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THIS**
5 **SUBTITLE APPLIES TO A CIVIL LITIGATION FUNDING COMPANY.**

6 **(C) (1) A CIVIL LITIGATION FUNDING COMPANY IS NOT REQUIRED TO**
7 **HAVE A RESIDENT OFFICE IN THE STATE.**

8 **(2) A NONRECOURSE CIVIL LITIGATION FUNDING TRANSACTION**
9 **MAY BE PROCESSED AND COMPLETED BY ELECTRONIC MEANS.**

10 **(3) INSTEAD OF A SURETY BOND REQUIRED UNDER § 11–206 OF**
11 **THIS SUBTITLE, A CIVIL LITIGATION FUNDING COMPANY MAY USE A LINE OF**
12 **CREDIT FROM A REGULATED FINANCIAL INSTITUTION FOR THE REQUIRED**
13 **AMOUNT.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That, the Commissioner of
15 Financial Regulation shall submit the first report required under § 5–1207(d) of the
16 Courts Article, as enacted by Section 1 of this Act, on or before December 1, 2011.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2010.