

HOUSE BILL NO. 465

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HAAHR.

1096H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 436, RSMo, by adding thereto eleven new sections relating to the civil justice funding model act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 436, RSMo, is amended by adding thereto eleven new sections, to
2 be known as sections 436.550, 436.552, 436.554, 436.556, 436.558, 436.560, 436.562, 436.564,
3 436.566, 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 Justice Funding Model 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 justice funding;

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

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

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

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

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

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

20 a. That provides financing to a civil justice funding company; or

21 b. To which a civil justice funding company grants a security interest or transfers
22 any rights or interest in a civil justice funding; or

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

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

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

26 (b) Has a legal claim in Missouri;

27 (6) "Funded amount", the amount of moneys provided to or on behalf of the
28 consumer in the civil justice funding. Funded amount does not include charges;

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

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

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

37 (10) "Resolution date", the date the amount funded to the consumer plus the agreed
38 upon charges are delivered to the civil justice funding company.

436.554. 1. All civil justice 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 justice 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 justice funding company
16 when the legal claim has been resolved. Once the civil justice funding company confirms
17 in writing the amount due under the contract, the consumer's attorney shall pay the civil
18 justice funding company from the proceeds of the resolution of the legal claim the amount
19 due within ten business days.

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

436.556. A civil justice 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) Intentionally advertise materially false or misleading information regarding its
9 products or services;

10 (4) Refer, in furtherance of an initial legal 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 justice funding company's entire
20 funded amount and contracted charges, unless a lesser amount is otherwise agreed to in
21 writing by the civil justice funding companies, except that multiple companies may agree
22 to contemporaneously provide funding to a consumer provided that the consumer and the
23 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) Knowingly pay or offer to pay for court costs, filing fees or attorneys fees either
28 during or after the resolution of the legal claim, using funds from the civil justice funding
29 transaction.

436.558. 1. A civil justice 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 justice funding company imposes be greater
6 than twenty-one percent of the funded amount.

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

436.560. All civil justice 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 justice 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 justice 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 justice funding company shall have no role in deciding whether, when
26 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 JUSTICE FUNDING COMPANY] ANYTHING IF
38 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 JUSTICE FUNDING
41 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 benefit planning, or financial advice regarding this
49 transaction.”**

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

4 **2. If a court of competent jurisdiction determines that a civil justice funding
5 company has intentionally violated the provisions of this statute with regard to a specific
6 civil justice funding, the civil justice funding company shall be entitled to recover only the
7 funded amount provided to the consumer in such specific civil justice funding and shall not
8 be entitled to any additional charges.**

1 **436.564. 1. The contingent right to receive an amount of the potential proceeds of**
2 **a legal claim is assignable by a consumer.**

3 **2. Nothing contained in sections 436.550 to 436.570 shall be construed to cause any**
4 **civil justice funding transaction conforming to sections 436.550 to 436.570 to be deemed**
5 **a loan or to be subject to any of the provisions governing loans contained in this code. A**
6 **civil justice funding transaction that complies with sections 436.550 to 436.570 is not**
7 **subject to any other statutory or regulatory provisions governing loans or investment**
8 **contracts. To the extent that sections 436.550 to 436.570 conflict with any other law,**
9 **sections 436.550 to 436.570 supersede the other law for the purposes of regulating civil**
10 **justice fundings in this state.**

11 **3. Only attorney's liens related to the legal claim or Medicare or other statutory**
12 **liens related to the legal claim shall take priority over any lien of the civil justice funding**
13 **company. All other liens shall take priority by normal operation of law.**

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 justice funding company offering civil justice**
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 justice funding**
5 **company offering civil justice funding to that consumer.**

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

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

4 **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 may**
19 **post an irrevocable letter of credit. The terms of the bond shall run concurrent with the**
20 **period of time during which the registration will be in effect. The bond shall provide that**
21 **the registrant will faithfully conform to and abide by the provisions of sections 436.550 to**
22 **436.570 and to all rules lawfully made by the administrator under the provisions of sections**
23 **436.550 to 436.570 and to any such person or persons any and all amounts of money that**
24 **may become due or owing to the state or to such person or persons from the registrant**
25 **under and by virtue of sections 436.550 to 436.570 during the period for which the bond**
26 **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 justice funding company that registered with the department of insurance, financial**
39 **institutions and professional registration between the effective date of sections 436.550 to**
40 **436.570 and six months thereafter may engage in civil justice funding while the company's**
41 **registration is awaiting approval by the department. All funding agreements prior to the**
42 **effective date of sections 436.550 to 436.570 are not subject to the terms of sections 436.550**
43 **to 436.570.**

44 **7. No civil justice funding company shall use any form of civil justice 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.**

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