

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1558 be amended to read as follows:

- 1 Replace the effective dates in SECTION 3 and SECTION 5 with
- 2 "[EFFECTIVE JANUARY 1, 2014]".
- 3 Page 1, delete lines 1 through 17, begin a new paragraph, and insert:
- 4 "SECTION 1. IC 4-5-1-11, AS AMENDED BY P.L.197-2011,
- 5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 6 JANUARY 1, 2014]: Sec. 11. The secretary of state may adopt and
- 7 enforce rules under IC 4-22-2 that are necessary to carry out:
- 8 (1) IC 9-18-26;
- 9 (2) IC 9-22-4;
- 10 (3) IC 9-23-2;
- 11 (4) IC 9-23-3; ~~and~~
- 12 (5) IC 9-23-6; ~~and~~
- 13 **(6) IC 34-60-10.**
- 14 Page 2, delete lines 1 through 19.
- 15 Page 3, line 5, delete "a consumer lawsuit loan (as" and insert "**civil**
- 16 **justice funding (as defined by IC 34-60-1-1(3)) or a civil justice**
- 17 **funding company (as defined by IC 34-60-1-1(4))."**
- 18 Page 3, delete lines 8 through 15.
- 19 Page 3, delete lines 19 through 42, begin a new paragraph, and
- 20 insert:
- 21 **"ARTICLE 60. CIVIL JUSTICE FUNDING**
- 22 **Chapter 1. Definitions**
- 23 **Sec. 1. The following definitions apply throughout this article:**
- 24 **(1)"Advertise" means publishing or disseminating any**

- 1 written, electronic, or printed communication, or any
2 communication by means of recorded telephone messages or
3 transmitted on radio, television, the Internet or similar
4 communications media, including film strips, motion pictures
5 and videos, published, disseminated, circulated or placed
6 before the public, directly or indirectly, for the purpose of
7 inducing a consumer to enter into a civil justice funding.
8 (2) "Charges" means the amount of money to be paid to the
9 civil justice funding company by or on behalf of the consumer,
10 above the funded amount provided by or on behalf of the
11 company to a consumer. The term includes all administrative,
12 origination, underwriting, and other fees no matter how
13 denominated.
14 (3) "Civil justice funding" means a nonrecourse transaction
15 in which a civil justice funding company purchases and a
16 consumer assigns to the company a contingent right to receive
17 an amount of the potential proceeds of a settlement,
18 judgment, award, or verdict obtained in the consumer's legal
19 claim.
20 (4) "Civil justice funding company" or "company" means a
21 person or entity that enters into a civil justice funding with a
22 consumer. This term does not include the following:
23 (A) An immediate family member of the consumer.
24 (B) A bank, lender, financing entity, or other special
25 purpose entity:
26 (i) that provides financing to a civil justice funding
27 company; or
28 (ii) to which a civil justice funding company grants a
29 security interest or transfers any rights or interest in a
30 civil justice funding.
31 (C) An attorney or accountant who provides services to a
32 consumer.
33 (5) "Consumer" means a natural person who has a pending
34 legal claim and who:
35 (1) resides in Indiana; or
36 (2) has a legal claim in Indiana.
37 (6) "Funded amount" means the amount of monies provided
38 to, or on behalf of, the consumer in the civil justice funding.
39 The term excludes charges.
40 (7) "Funding date" means the date on which the funded
41 amount is transferred to the consumer by the civil justice
42 funding company, by:
43 (A) personal delivery, wire, ACH, or other electronic
44 means; or
45 (B) insured, certified, or registered United States mail.
46 (8) "Immediate family member" means a:
47 (A) parent;

- 1 **(B) sibling;**
- 2 **(C) child;**
- 3 **(D) spouse;**
- 4 **(E) grandparent; or**
- 5 **(F) grandchild.**
- 6 **(9) "Legal claim" means a bona fide civil claim or cause of**
- 7 **action.**
- 8 **(10) "Resolution date" means the date the amount funded to**
- 9 **the consumer, plus the agreed upon charges, are delivered to**
- 10 **the civil justice funding company.**

Chapter 2. Contract Requirements

Sec. 1. Every civil justice funding shall meet the following requirements:

- 14 **(1) The contract shall be completely filled in when presented**
- 15 **to the consumer for signature.**
- 16 **(2) The contract shall contain, in bold and boxed type, a right**
- 17 **of rescission, allowing the consumer to cancel the contract**
- 18 **without penalty or further obligation if, not later than five (5)**
- 19 **business days after the funding date, the consumer either:**
- 20 **(A) returns to the civil justice funding company the full**
- 21 **amount of the disbursed funds by delivering the company's**
- 22 **uncashed check to the company's office in person; or**
- 23 **(B) mails, by insured, certified, or registered United States**
- 24 **mail, to the address specified in the contract, a notice of**
- 25 **cancellation and includes in the mailing a return of the full**
- 26 **amount of disbursed funds in the form of the company's**
- 27 **uncashed check or a registered or certified check or money**
- 28 **order.**
- 29 **(3) The contract shall contain the initials of the consumer on**
- 30 **each page.**

Sec. 2. The contract shall contain a verified statement by the attorney retained by the consumer in the legal claim stating all of the following:

- 34 **(1) To the best of the attorney's knowledge, all the costs and**
- 35 **charges relating to the civil justice funding have been**
- 36 **disclosed to the consumer.**
- 37 **(2) The attorney is being paid on a contingency basis pursuant**
- 38 **to a written fee agreement.**
- 39 **(3) All proceeds of the legal claim will be disbursed via either**
- 40 **the attorney's trust account or a settlement fund established**
- 41 **to receive the proceeds of the legal claim on behalf of the**
- 42 **consumer.**
- 43 **(4) The attorney is following the written instructions of the**
- 44 **consumer with regard to the civil justice funding.**
- 45 **(5) The attorney has not received a referral fee or other**
- 46 **consideration from the civil justice funding company in**
- 47 **connection with the civil justice funding, nor will the attorney**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

receive such fee or other consideration in the future.

Sec. 3. A contract that does not contain the verified statement described in section 2 of this chapter is void.

Chapter 3. Civil Justice Funding Company Prohibitions

Sec. 1. A civil justice funding company may not do any of the following:

- (1) Pay or offer to pay a commission, referral fee, or other form of consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees, for referring a consumer to the company.**
- (2) Accept a commission, referral fee, rebate, or other form of consideration from an attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees.**
- (3) Intentionally advertise materially false or misleading information regarding its products or services.**
- (4) Refer, in furtherance of an initial legal funding, a customer or potential customer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist, or any of their employees. However, if a customer needs legal representation, the company may refer the customer to a local or state bar association referral service.**
- (5) Fail to promptly supply a copy of the executed contract to the attorney for the consumer.**
- (6) Knowingly provide funding to a consumer who has previously assigned or sold a portion of the consumer's right to proceeds from his or her legal claim without first making payment to or purchasing a prior unsatisfied civil justice funding company's entire funded amount and contracted charges, unless a lesser amount is otherwise agreed to in writing by the civil justice funding company. However, multiple companies may agree to simultaneously provide funding to a consumer if the consumer and the consumer's attorney consent to the arrangement in writing.**
- (7) Receive any right to make any decision with respect to the conduct of the underlying legal claim or any settlement or resolution of the claim, or make any decision with respect to the conduct of the underlying legal claim or any settlement or resolution of the claim. The right to make these decisions remains solely with the consumer and the attorney in the legal claim.**
- (8) Knowingly pay or offer to pay for court costs, filing fees, or attorney's fees either during or after the resolution of the legal claim, using funds from the civil justice funding transaction.**

Chapter 4. Contracted Amounts

A civil justice funding company shall require the contracted amount payable to the company to be set as a predetermined

1 amount based upon intervals of time from the funding date
 2 through the resolution date, and not be determined as a percentage
 3 of the recovery from the legal claim.

4 **Chapter 5. Disclosures**

5 All civil justice funding contracts shall contain the disclosures
 6 specified in this section, which are material terms of the contract.
 7 Unless otherwise specified, the disclosures shall be typed in at least
 8 twelve (12) point bold font and be placed clearly and conspicuously
 9 within the contract. The following disclosures are required:

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

12 (A) the funded amount to be paid to the consumer by the
 13 civil justice funding company;

14 (B) an itemization of one (1) time charges;

15 (C) the total amount to be assigned by the consumer to the
 16 company, including the funded amount and all charges;
 17 and

18 (D) a payment schedule including the funded amount and
 19 charges, listing all dates and the amount due at the end of
 20 each one hundred and eighty (180) day period, from the
 21 funding date until the date on which the maximum amount
 22 due to the company by the consumer occurs.

23 (2) A notice within the body of the contract stating:
 24 "Consumer's Right to Cancellation: You may cancel this
 25 contract without penalty or further obligation within five (5)
 26 business days after the funding date if you either:

27 (A) return to the civil justice funding company the full
 28 amount of the disbursed funds by delivering the company's
 29 uncashed check to the company's office in person; or

30 (B) mail, by insured, certified, or registered United States
 31 mail, to the company at the address specified in the
 32 contract, a notice of cancellation and include in the mailing
 33 a return of the full amount of disbursed funds in the form
 34 of the company's uncashed check or a registered or
 35 certified check or money order."

36 (3) A noticing informing the consumer that the civil justice
 37 funding company has no role in deciding whether, when, and
 38 how much the legal claim is settled for. However, the
 39 consumer and consumer's attorney must notify the company
 40 of the outcome of the legal claim by settlement or adjudication
 41 prior to the resolution date. The company may seek updated
 42 information about the status of the legal claim but in no event
 43 may the company interfere with the independent professional
 44 judgment of the attorney in the handling of the legal claim or
 45 any settlement.

46 (4) Within the body of the contract, in all capital letters in at
 47 least a twelve (12) point bold font contained within a box:

1 **"THE FUNDED AMOUNT AND AGREED UPON**
 2 **CHARGES SHALL BE PAID ONLY FROM THE**
 3 **PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE**
 4 **PAID ONLY TO THE EXTENT THAT THERE ARE**
 5 **AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM.**
 6 **YOU WILL NOT OWE [INSERT NAME OF THE CIVIL**
 7 **JUSTICE FUNDING COMPANY] ANYTHING IF THERE**
 8 **ARE NO PROCEEDS FROM YOUR LEGAL CLAIM,**
 9 **UNLESS YOU OR YOUR ATTORNEY HAVE VIOLATED**
 10 **ANY MATERIAL TERM OF THIS CONTRACT OR YOU**
 11 **HAVE COMMITTED FRAUD AGAINST THE CIVIL**
 12 **JUSTICE FUNDING COMPANY."**

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

24 **Chapter 6. Violations**

25 **Sec. 1. This article does not restrict the exercise of powers or the**
 26 **performance of the duties of the attorney general.**

27 **Sec. 2. If a court of competent jurisdiction determines that a**
 28 **civil justice funding company has intentionally violated the**
 29 **provisions of this article with regard to a specific civil justice**
 30 **funding, the civil justice funding company is only entitled to**
 31 **recover the funded amount provided to the consumer in that civil**
 32 **justice funding and is not entitled to any additional charges.**

33 **Chapter 7. Assignability**

34 **Sec. 1. A consumer may assign the contingent right to receive an**
 35 **amount of the potential proceeds of a legal claim.**

36 **Sec. 2. Nothing contained in this article may be construed to**
 37 **cause any civil justice funding transaction that complies with the**
 38 **requirements of this article to be considered a loan or to be**
 39 **otherwise subject to any other provisions of Indiana law governing**
 40 **loans. Notwithstanding any other law, a civil justice funding**
 41 **transaction that complies with this article is not subject to any**
 42 **other statutory or regulatory provisions governing loans or**
 43 **investment contracts. To the extent that this article conflicts with**
 44 **any other law, this article supersedes the other law for the**
 45 **purposes of regulating civil justice fundings.**

46 **Sec. 3. Only attorney's liens related to the legal claim, or**
 47 **Medicare or other statutory liens related to the legal claim, take**

1 priority over a lien of the civil justice funding company. All other
2 liens shall take priority by normal operation of law.

3 **Chapter 8. Attorney Prohibitions**

4 **Sec. 1.** An attorney or law firm retained by the consumer in the
5 legal claim may not have a financial interest in the civil justice
6 funding company offering civil justice funding to that consumer.
7 Additionally, any attorney who has referred the consumer to his or
8 her retained attorney may not have a financial interest in the civil
9 justice funding company offering civil justice funding to that
10 consumer.

11 **Chapter 9. Privileged communication**

12 **Sec. 1.** No communication between the consumer's attorney in
13 the legal claim and the civil justice funding company with respect
14 to the civil justice funding limits, waives, or abrogates the scope or
15 nature of any statutory or common law privilege, including the
16 work product doctrine and the attorney client privilege.

17 **Chapter 10. Registration**

18 **Sec. 1.** A civil justice funding company may not engage in the
19 business of civil justice funding unless the company has registered
20 with the secretary of state in accordance with this chapter.

21 **Sec. 2.** A civil justice funding company application and
22 registration form must be filed in the manner prescribed by the
23 secretary of state and must contain the information the secretary
24 of state requires to make an evaluation of the character and fitness
25 of the applicant company. The initial application must be
26 accompanied by a five hundred dollar (\$500) fee. A renewal
27 registration must include a two hundred dollar (\$200) fee. A
28 registration must be renewed every two (2) years and expires on
29 September 30th.

30 **Sec. 3.** A certificate of registration may not be issued unless the
31 secretary of state, upon investigation, finds that the character and
32 fitness of the applicant company, and of the officers and directors
33 of the company, are sufficient to warrant belief that the business
34 will be operated honestly and fairly.

35 **Sec. 4.** Every registrant shall also, at the time of filing an
36 application, file with the secretary of state, if required by the
37 secretary of state, a bond satisfactory to the secretary of state in an
38 amount not to exceed fifty thousand dollars (\$50,000.) In lieu of the
39 bond, at the option of the registrant, the registrant may post an
40 irrevocable letter of credit. The terms of the bond must run
41 concurrently with the period of time during which the registration
42 will be in effect. The bond must provide that the registrant will
43 faithfully follow the law.

44 **Sec. 5. (a)** Upon written request, the applicant is entitled to a
45 hearing on the question of the applicant's qualifications for a
46 registration if:

- 47 (1) the secretary of state has notified the applicant in writing

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that the application has been denied; or
(2) the secretary of state has not issued a registration within sixty (60) days after the application for the registration was filed.

(b) A request for a hearing may not be made more than fifteen (15) days after the secretary of state has mailed a written notice to the applicant that the application has been denied and described in substance the secretary of state's findings supporting denial of the application.

Sec. 6. A civil justice funding company that registered with the secretary of state after January 1, 2014, and before July 1, 2014, may engage in civil justice funding while the company's registration is waiting approval by the secretary of state. Any funding agreement entered into before January 1, 2014, is not subject to the provisions of this article.

Sec. 7. A civil justice funding company may not use any form of civil justice funding contract in this state unless it has been filed with the secretary of state in accordance with the filing procedures set forth by the secretary of state.

Sec. 8. Fees collected under this chapter shall be deposited in the electronic and enhanced access fund established by IC 4-5-10-5.

Sec. 9. The secretary of state may adopt rules under IC 4-22-2 to implement this chapter."

Delete page 4.
Renumber all SECTIONS consecutively.
(Reference is to HB 1558 as printed February 15, 2013.)

Representative Koch