

By: Thompson of Harris

H.B. No. 1254

A BILL TO BE ENTITLED

1 AN ACT

2 relating to transactions involving the assignment of rights in an
3 individual's legal claim; authorizing the imposition of a fee.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The heading to Title 5, Business & Commerce Code,
6 is amended to read as follows:

7 TITLE 5. REGULATION OF BUSINESSES, ~~[AND]~~ SERVICES, AND
8 CERTAIN TRANSACTIONS

9 SECTION 2. The heading to Subtitle C, Title 5, Business &
10 Commerce Code, is amended to read as follows:

11 SUBTITLE C. BUSINESS OPERATIONS AND TRANSACTIONS

12 SECTION 3. Subtitle C, Title 5, Business & Commerce Code, is
13 amended by adding Chapter 109 to read as follows:

14 CHAPTER 109. REGULATION OF CIVIL JUSTICE FUNDING

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 109.001. SHORT TITLE. This chapter may be cited as the
17 Civil Justice Funding Act.

18 Sec. 109.002. DEFINITIONS. In this chapter:

19 (1) "Advertise" means to publish or disseminate a
20 written, electronic, or printed communication, or to publish,
21 disseminate, circulate, or place directly or indirectly before the
22 public a communication by means of a recorded telephone message or a
23 communication transmitted on radio, television, the Internet, or
24 similar communications media, including film strips, motion

1 pictures, and videos, for the purpose of inducing a person to enter
2 into a civil justice funding transaction.

3 (2) "Charge" or "charges" means the amount paid to a
4 civil justice funding company by or on behalf of the consumer, in
5 addition to the funded amount provided by or on behalf of the
6 company to a consumer. The term includes an administrative fee,
7 origination fee, underwriting fee, and other fees, regardless of
8 how the fee is denominated.

9 (3) "Civil justice funding transaction" means a
10 non-recourse transaction in which a civil justice funding company
11 purchases, and a consumer assigns to the company, a contingent
12 right to receive an amount of the potential proceeds of a
13 settlement, judgment, award, or verdict obtained in the consumer's
14 legal claim.

15 (4) "Civil justice funding company" or "company" means
16 a person that enters into a civil justice funding transaction with a
17 consumer.

18 (5) "Consumer" means an individual who has a pending
19 legal claim and who:

20 (A) resides in this state; or

21 (B) has a legal claim in this state.

22 (6) "Department" means the Texas Department of
23 Licensing and Regulation.

24 (7) "Funded amount" means the amount provided to or on
25 behalf of the consumer in a civil justice funding transaction. The
26 term does not include a charge.

27 (8) "Funding date" means the date on which the civil

1 justice funding company:

2 (A) transfers the funded amount to the consumer
3 by personal delivery or by wire, ACH debit, or other electronic
4 means; or

5 (B) mails the funded amount to the consumer by
6 insured, certified, or registered United States mail.

7 (9) "Immediate family member" means:

8 (A) a parent, sibling, spouse, grandparent, or
9 grandchild of an individual; or

10 (B) a child related by blood, adoption, or
11 marriage to an individual.

12 (10) "Legal claim" means a bona fide civil claim or
13 cause of action.

14 (11) "Resolution date" means the date on which the sum
15 of the amount funded to the consumer and the agreed to charges is
16 delivered to the civil justice funding company.

17 Sec. 109.003. NONAPPLICABILITY OF CHAPTER. (a) This
18 chapter does not apply to the following persons who enter into a
19 civil justice funding transaction with a consumer:

20 (1) an immediate family member of the consumer; or

21 (2) an attorney or accountant who provides services to
22 the consumer.

23 (b) This chapter does not apply to a bank, lender, financing
24 entity, or other special purpose entity:

25 (1) that provides financing to a civil justice funding
26 company; or

27 (2) to which a civil justice funding company grants a

1 security interest or transfers any rights or interest in a civil
2 justice funding transaction.

3 Sec. 109.004. ASSIGNMENT OF RIGHT TO THIRD PARTY. A
4 consumer may assign the contingent right to receive an amount of the
5 potential proceeds of a legal claim to a third party.

6 Sec. 109.005. FUNDING TRANSACTION NOT A LOAN. (a) Nothing
7 in this chapter shall be construed to cause a civil justice funding
8 transaction under this chapter to be considered a loan or to be
9 subject to state laws governing loans.

10 (b) A civil justice funding transaction that complies with
11 this chapter is not subject to any other state law or to regulatory
12 provisions of this state governing loans or investment contracts.

13 Sec. 109.006. EFFECT OF COMMUNICATION RELATING TO FUNDING
14 TRANSACTION ON RECOGNIZED PRIVILEGES. A communication between the
15 consumer's attorney handling the legal claim and the civil justice
16 funding company that pertains to a civil justice funding
17 transaction does not limit, waive, or abrogate the scope or nature
18 of any applicable statutory or common law privilege, including the
19 work-product doctrine and the attorney-client privilege.

20 Sec. 109.007. PRIORITY OF LIEN. (a) Only the following
21 liens take priority over a lien of the civil justice funding
22 company:

- 23 (1) an attorney's lien related to the legal claim;
24 (2) a lien related to Medicare; or
25 (3) another statutory lien related to the legal claim.

26 (b) All other liens shall take priority by normal operation
27 of law.

1 Sec. 109.008. CONFLICT WITH OTHER LAW. To the extent that
2 this chapter conflicts with other law with respect to the
3 regulation of civil justice funding companies, this chapter
4 controls.

5 SUBCHAPTER B. CONTRACT

6 Sec. 109.051. FORM OF CONTRACT. A civil justice funding
7 contract must:

8 (1) be in writing;

9 (2) contain the initials of the consumer on each page;

10 and

11 (3) be completed when presented to the consumer for
12 signature.

13 Sec. 109.052. RIGHT OF RESCISSION. A civil justice funding
14 contract must contain inside a text box, in bold type, a right of
15 rescission permitting the consumer to cancel the contract without
16 penalty or further obligation if, not later than the fifth business
17 day after the funding date, the consumer:

18 (1) returns to the civil justice funding company the
19 full amount of the disbursed funds by personally delivering the
20 company's uncashed check to the company's office; or

21 (2) mails by insured, certified, or registered United
22 States mail to the address specified in the contract a notice of
23 cancellation and the full amount of disbursed funds in the form of
24 the company's uncashed check or a registered or certified check or
25 money order.

26 Sec. 109.053. DISCLOSURES. (a) A civil justice funding
27 contract must contain the disclosures required by this section,

1 which constitute material terms of the contract. The disclosures
2 must be clear and conspicuous and in at least 12-point bold type,
3 except as provided by Subsection (f).

4 (b) On the front page of the contract under appropriate
5 headings, the contract must disclose:

6 (1) the funded amount to be paid to the consumer by the
7 civil justice funding company;

8 (2) an itemization of one-time charges;

9 (3) the total amount to be assigned by the consumer to
10 the company, including the funded amount and all charges; and

11 (4) a payment schedule that:

12 (A) includes the funded amount and charges; and

13 (B) lists all dates and the amount due at the end
14 of each 180-day period from the funding date until the due date of
15 the maximum amount due to the company by the consumer to satisfy the
16 contract amount.

17 (c) Pursuant to the requirements set forth in Section
18 109.052, the contract must contain the following statement:

19 "CONSUMER'S RIGHT TO CANCELLATION: You may cancel this contract
20 without penalty or further obligation within five business days
21 after the funding date if you either:

22 "i. return to the civil justice funding company the full
23 amount of the disbursed funds by delivering the company's uncashed
24 check to the company's office in person; or

25 "ii. mail, by insured, certified, or registered United
26 States mail, to the company at the address specified in the
27 contract, a notice of cancellation and include in the mailing a

1 return of the full amount of disbursed funds in the form of the
2 company's uncashed check or a registered or certified check or
3 money order."

4 (d) The contract must disclose that:

5 (1) the civil justice funding company may not
6 participate in deciding whether, when, or the amount for which a
7 legal claim is settled;

8 (2) the company may seek updated information about the
9 status of the legal claim but may not interfere with the independent
10 professional judgment of the attorney in handling the legal claim
11 or any settlement of the claim; and

12 (3) the consumer and the consumer's attorney must
13 notify the company of the settlement or adjudication of the legal
14 claim before the resolution date.

15 (e) The contract must contain in all capital letters the
16 following text within a box: "THE FUNDED AMOUNT AND AGREED TO
17 CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM,
18 AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE
19 PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF
20 THE CIVIL JUSTICE FUNDING COMPANY) ANYTHING IF THERE ARE NO
21 PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU OR YOUR ATTORNEY HAVE
22 VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED
23 FRAUD AGAINST THE CIVIL JUSTICE FUNDING COMPANY."

24 (f) Immediately above the line for the consumer's
25 signature, the contract must contain the following disclosure in
26 12-point type: "Do not sign this contract before you read it
27 completely or if it contains any blank spaces. You are entitled to a

1 completed copy of the contract. Before you sign this contract, you
2 should obtain the advice of an attorney. Depending on the
3 circumstances, you may want to consult a tax, public or private
4 benefits planning, or financial professional. You acknowledge that
5 the attorney handling your legal claim has provided no tax, public
6 or private benefit planning, or financial advice regarding this
7 transaction."

8 Sec. 109.054. WRITTEN ACKNOWLEDGMENT OF ATTORNEY. (a) The
9 contract must contain a written acknowledgment by the attorney
10 representing the consumer in the legal claim attesting to the
11 following:

12 (1) to the best of the attorney's knowledge, all costs
13 and charges relating to the civil justice funding transaction have
14 been disclosed to the consumer;

15 (2) the attorney is being paid on a contingency basis
16 under a written fee agreement;

17 (3) all proceeds of the legal claim will be disbursed
18 through the trust account of the attorney or a settlement fund
19 established to receive the proceeds of the legal claim on the
20 consumer's behalf;

21 (4) the attorney is following the consumer's written
22 instructions regarding the civil justice funding transaction; and

23 (5) the attorney has not received, or will not receive
24 at a later date, from the civil justice funding company a referral
25 fee or other form of consideration in connection with the civil
26 justice funding transaction.

27 (b) If the acknowledgment required by Subsection (a) is not

1 completed by the attorney representing the consumer in the legal
2 claim, the contract is void. The contract will remain enforceable
3 if the consumer terminates the initial attorney or retains a new
4 attorney with respect to the legal claim, who then completes the
5 acknowledgment required by Subsection (a).

6 Sec. 109.055. CONTRACT AMOUNT. A civil justice funding
7 company shall require the contracted amount to be paid to the
8 company to be a predetermined amount based on periodic intervals
9 from the funding date through the resolution date, and not an amount
10 determined as a percentage of the recovery from the legal claim.

11 Sec. 109.056. CONTRACT FILING REQUIREMENT. A civil justice
12 funding contract must be filed with the department in accordance
13 with the filing procedures specified by the department.

14 SUBCHAPTER C. REGISTRATION

15 Sec. 109.101. REGISTRATION REQUIRED; APPLICATION. (a) A
16 civil justice funding company must register with the department
17 before engaging in civil justice funding transactions in this
18 state.

19 (b) A civil justice funding company must file a registration
20 application in the form and manner prescribed by the department.

21 The application must:

22 (1) contain all information the department requires to
23 evaluate the character and fitness of the applicant, and if the
24 applicant is an entity, the character and fitness of each officer
25 and director of the applicant company; and

26 (2) be accompanied by a reasonable fee in an amount
27 determined by the department.

1 Sec. 109.102. BOND; LETTER OF CREDIT. (a) The department
2 may require an applicant or registrant to file a bond with the
3 application in an amount not to exceed \$50,000.

4 (b) The bond terms must run concurrent with the registration
5 period. The bond must provide that the registrant will, during the
6 registration period:

7 (1) faithfully conform to and abide by:

8 (A) the requirements of this chapter; and

9 (B) the rules adopted by the Texas Commission of
10 Licensing and Regulation to administer this chapter; and

11 (2) provide any amount that may become due or owing to
12 the state from the registrant under this chapter.

13 (c) In lieu of the bond, the applicant or registrant, at the
14 applicant's or registrant's option, may post an irrevocable letter
15 of credit.

16 Sec. 109.103. ISSUANCE OF CERTIFICATE OF REGISTRATION. The
17 department may not issue a certificate of registration unless the
18 department, following an investigation, determines that the
19 character and fitness of the applicant or of the applicant
20 company's officers and directors warrant belief that the business
21 will be operated honestly and fairly in accordance with this
22 chapter.

23 Sec. 109.104. HEARING. (a) On written request, the
24 department shall set a hearing before the State Office of
25 Administrative Hearings to determine an applicant's qualifications
26 for registration if:

27 (1) the department has notified the applicant in

1 writing of the denial of the application; or

2 (2) the department has not issued a certificate of
3 registration not later than the 60th day after the date the
4 applicant filed the application.

5 (b) An applicant may not request a hearing under this
6 section after the 16th day after the date the department sends
7 written notice to the applicant that the application has been
8 denied and stating the reasons for the denial.

9 Sec. 109.105. RENEWAL OF REGISTRATION. A civil justice
10 funding company must renew its registration on September 30 every
11 two years by paying a \$200 renewal fee.

12 SUBCHAPTER D. PROHIBITIONS

13 Sec. 109.151. PROHIBITED ACTIVITIES OR CONDUCT. A civil
14 justice funding company may not:

15 (1) pay or offer to pay a commission, referral fee, or
16 other form of consideration to an attorney, law firm, medical
17 provider, chiropractor, or physical therapist or an employee of
18 such a person for referring a consumer to the company;

19 (2) accept any commission, referral fee, rebate, or
20 other form of consideration from an attorney, law firm, medical
21 provider, chiropractor, or physical therapist or an employee of
22 such a person;

23 (3) intentionally advertise materially false or
24 misleading information about the company's products or services;

25 (4) refer, to further an initial legal funding, a
26 customer or potential customer to a specific attorney, law firm,
27 medical provider, chiropractor, or physical therapist or an

1 employee of such a person, except that the company may refer a
2 customer or potential customer who needs legal representation to a
3 local or state bar association referral service;

4 (5) fail to promptly supply a copy of the executed
5 contract to the consumer's attorney;

6 (6) knowingly provide funding to a consumer who has
7 previously assigned or sold a portion of the consumer's right to
8 proceeds from the consumer's legal claim without first paying to or
9 purchasing from a previously unsatisfied civil justice funding
10 company that company's entire funded amount and contracted charges,
11 unless:

12 (A) a lesser amount is otherwise agreed to in
13 writing by the civil justice funding companies; or

14 (B) multiple companies have agreed to
15 concurrently provide funding to a consumer, if the consumer and the
16 consumer's attorney consent to the arrangement in writing;

17 (7) make a decision relating to the conduct,
18 settlement, or resolution of the underlying legal claim, the power
19 of which must remain solely with the consumer and the attorney
20 handling the legal claim; or

21 (8) knowingly pay or offer to pay, using funds from the
22 civil justice funding transaction, court costs, filing fees, or
23 attorneys' fees during or after the resolution of the legal claim.

24 SUBCHAPTER E. ENFORCEMENT

25 Sec. 109.201. VIOLATION OF CHAPTER. (a) If a court finds
26 that a civil justice funding company has intentionally violated
27 this chapter with respect to a civil justice funding transaction,

1 the company is entitled to recover the funded amount provided to the
2 consumer and may not receive any additional charges.

3 (b) Nothing in this chapter shall be construed to restrict
4 the attorney general from exercising the powers conferred on the
5 attorney general by law or from performing duties as required by
6 law.

7 SECTION 4. As soon as practicable after the effective date
8 of this Act, but not later than January 1, 2014, the Texas
9 Commission of Licensing and Regulation shall adopt the rules and
10 procedures necessary to implement Chapter 109, Business & Commerce
11 Code, as added by this Act.

12 SECTION 5. The changes in law made by this Act apply only to
13 a civil justice funding contract entered into on or after the
14 effective date of this Act. A civil justice funding contract
15 entered into before the effective date of this Act is governed by
16 the law in effect on the date the contract was entered into, and the
17 former law is continued in effect for that purpose.

18 SECTION 6. (a) Except as provided by Subsection (b) of this
19 section, this Act takes effect September 1, 2013.

20 (b) Subchapter C, Chapter 109, Business & Commerce Code, as
21 added by this Act, takes effect January 1, 2014.