



# House of Representatives

General Assembly

**File No. 297**

February Session, 2012

Substitute House Bill No. 5419

*House of Representatives, April 5, 2012*

The Committee on Banks reported through REP. TONG of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING NONRECOURSE CIVIL LITIGATION PURCHASE AGREEMENTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2012*) (a) As used in this  
2 section:

3 (1) "Nonrecourse civil litigation purchase agreement" means a  
4 transaction in which a civil litigation funding company purchases and  
5 a consumer assigns to the civil litigation funding company the  
6 contingent right to receive a portion of the potential proceeds of any  
7 realized settlement, judgment, award or verdict resulting from the  
8 consumer's pending civil action.

9 (2) "Consumer" means a person who (A) resides or is domiciled in  
10 this state, (B) has a pending civil action, and (C) is represented by an  
11 attorney at the time such person receives any funds from the civil  
12 litigation funding company.

13 (3) "Civil litigation funding company" means a person or entity that  
14 enters into a nonrecourse civil litigation purchase agreement with a  
15 consumer.

16 (b) Each nonrecourse civil litigation company and any employee,  
17 agent, subsidiary, successor or assign of the company, who enter into  
18 nonrecourse civil litigation purchase agreements, shall comply with  
19 the following: (1) A nonrecourse civil litigation purchase agreement  
20 shall comply with sections 42-152 to 42-158, inclusive, of the general  
21 statutes; and (2) such agreement shall be filled in completely and  
22 contain the following disclosures on the first page, in twelve-point or  
23 larger bold type, with a heading entitled "Disclosure Statement" and in  
24 a form approved by the Department of Consumer Protection in  
25 accordance with the provisions of this section: (A) The total amount to  
26 be advanced to the consumer; (B) itemization of all fees; (C) percentage  
27 fee or rate of return, and stated on an annualized basis, including  
28 frequency of compounding; and (D) the total amount to be repaid by  
29 the consumer, calculated at six-month intervals, carried forward to  
30 thirty-six months, including all fees and any minimum required  
31 payment amount.

32 (c) (1) A nonrecourse civil litigation purchase agreement shall  
33 provide that the consumer may cancel the agreement not later than  
34 five business days following the consumer's receipt of funds, without  
35 penalty or further obligation. Such agreement shall contain the  
36 following notice, written in a clear and conspicuous manner:  
37 "CONNECTICUT CONSUMER'S RIGHT TO CANCELLATION: YOU  
38 MAY CANCEL THIS AGREEMENT WITHOUT PENALTY OR  
39 FURTHER OBLIGATION NOT LATER THAN FIVE BUSINESS DAYS  
40 AFTER THE DATE YOU RECEIVE FUNDING FROM (insert the name  
41 of the nonrecourse civil litigation company)". (2) Such agreement shall  
42 specify that, in order for the cancellation to be effective, the consumer  
43 must either (A) return the full amount of the disbursed funds to the  
44 nonrecourse civil litigation company by delivering the nonrecourse  
45 civil litigation company's uncashed check to the office address  
46 designated on the disclosure statement, or (B) mail a notice of

47 cancellation and include with the mailing a return of the full amount of  
48 disbursed funds, in the form of the nonrecourse civil litigation  
49 company's check, a registered or certified check or a money order, by  
50 insured, registered or certified United States mail, postmarked not  
51 later than five business days after receiving the funds from the  
52 nonrecourse civil litigation company, at the address specified for such  
53 cancellation in such agreement.

54 (d) The consumer shall initial each page of a nonrecourse civil  
55 litigation purchase agreement. All nonrecourse civil litigation purchase  
56 agreements shall contain a legend, immediately above the consumer's  
57 signature, in twelve-point or larger bold type, reading: "DO NOT SIGN  
58 THIS NONRECOURSE CIVIL LITIGATION PURCHASE  
59 AGREEMENT BEFORE YOU READ IT COMPLETELY OR IF IT  
60 CONTAINS ANY BLANK SPACE. YOU SHOULD OBTAIN THE  
61 ADVICE OF AN ATTORNEY BEFORE YOU SIGN THIS  
62 AGREEMENT. YOU ARE ENTITLED TO A COMPLETELY FILLED  
63 IN COPY OF THIS AGREEMENT.".

64 (e) A nonrecourse civil litigation purchase agreement shall contain a  
65 written acknowledgement by the consumer's attorney of record stating  
66 the attorney has reviewed the agreement and explained its terms to the  
67 consumer, including the annualized rate of return used to calculate the  
68 amount to be paid by the consumer.

69 (f) Except when oral negotiations are conducted in another  
70 language, a nonrecourse civil litigation purchase agreement shall be  
71 printed in both English and Spanish. In the event oral negotiations are  
72 conducted in any other language (1) the principal terms of the  
73 agreement shall be translated in writing into the consumer's native  
74 language; (2) the consumer shall sign the translated document  
75 containing the principal terms and initial each page; and (3) the  
76 translator shall sign a notarized affirmation confirming that the  
77 principal terms have been presented to the consumer in his or her  
78 native language and acknowledged by the consumer, in writing. For  
79 purposes of this subsection, "principal terms" includes all of the items

80 required by subsections (b) to (e), inclusive, of this section.

81 (g) If a nonrecourse civil litigation purchase agreement provides for  
82 attorney's fees and costs in the case of a breach of the agreement by  
83 either party, the agreement shall provide that such attorney's fees and  
84 costs shall be reasonable and may be recovered by the prevailing  
85 party. Any limitation placed on such attorney's fees and costs shall  
86 apply equally to both parties.

87 (h) A nonrecourse civil litigation purchase agreement shall not  
88 require mandatory arbitration to resolve disputes between the parties.

89 (i) A nonrecourse civil litigation company shall register its name,  
90 address and principal place of business with the Department of  
91 Consumer Protection and shall provide its standard nonrecourse civil  
92 litigation purchase agreement form to be used in this state to the  
93 Commissioner of Consumer Protection.

94 (j) No nonrecourse civil litigation company shall assess interest or  
95 fees for any period exceeding thirty-six months from the date the  
96 company enters into a nonrecourse civil litigation purchase agreement  
97 with a consumer. Such agreement shall contain the following notice,  
98 written in a clear and conspicuous manner: "ASSESSMENT OF  
99 INTEREST AND FEES: NO INTEREST OR FEES SHALL BE  
100 ASSESSED FOR ANY PERIOD EXCEEDING THIRTY-SIX MONTHS."

101 (k) Any action on the part of a nonrecourse civil litigation company  
102 that arises out of a nonrecourse civil litigation purchase agreement  
103 with a Connecticut consumer shall be subject to the jurisdiction of this  
104 state.

105 (l) Failure to comply with any provision of subsections (a) to (k),  
106 inclusive, of this section shall (1) be an unfair trade practice pursuant  
107 to subsection (a) of section 42-110b of the general statutes, and (2)  
108 render the nonrecourse civil litigation purchase agreement void with  
109 regard to any rights or claims of the nonrecourse civil litigation  
110 company.

111 (m) Nothing in this section shall be construed to render a  
112 nonrecourse civil litigation purchase agreement a loan or subject to the  
113 provisions of section 37-4 of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2012	New section

**Statement of Legislative Commissioners:**

Changes were made for consistency throughout the bill and with the general statutes.

**BA**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 13 \$</b>	<b>FY 14 \$</b>
Consumer Protection, Dept.	GF - Cost	30,900	30,500
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	GF - Cost	8,800	8,800
Consumer Protection, Dept.	GF - Revenue Gain	50,000	50,000

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill results in a cost to the state of approximately \$39,700 in FY 13 and \$39,300 in FY 14. Additionally an estimated revenue gain of \$50,000 would occur due to violations of the bill's requirements which fall under the Connecticut Unfair Trade Practices Act (CUTPA).

The costs include a part-time Consumer Protection Investigator (\$30,000), fringe benefits (\$8,800), other expenses (\$500) and one-time costs in FY 13 to update the CAVU licensing system (\$400). The investigator is necessary to service potential complaints concerning the approximately ten companies in the state that service thousands of customers.

It is estimated that as many as ten of the complaints will result in a CUTPA violation which would result in a revenue gain of approximately \$50,000.

**The Out Years**

---

<sup>1</sup> The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated non-pension fringe benefit cost associated with most personnel changes is 29.22% of payroll in FY 13 and FY 14.

The annualized ongoing cost identified above would continue into the future subject to inflation and the revenue gain subject to the number of violations.

**OLR Bill Analysis**

**sHB 5419**

***AN ACT CONCERNING NONRECOURSE CIVIL LITIGATION PURCHASE AGREEMENTS.***

**SUMMARY:**

This bill creates several requirements for nonrecourse civil litigation purchase agreements. These are defined as transactions in which a civil litigation funding company purchases, and a consumer assigns to the company, the contingent right to receive a portion of the potential proceeds of the consumer's civil action settlement, judgment, award, or verdict.

Failure to meet the requirements constitutes a violation of the Connecticut Unfair Trade Practices Act. These requirements include, among others, notification that the consumer (1) has a five business day right to cancel, (2) should obtain an attorney's advice before signing the agreement, and (3) must not be assessed for interest or fees for any period over 36 months.

The bill requires each nonrecourse civil litigation funding company to register with the Department of Consumer Protection (DCP).

Additionally, the bill specifies that a nonrecourse civil litigation purchase agreement is not a loan and is therefore not subject to the statutory 12% interest rate cap.

EFFECTIVE DATE: October 1, 2012

**APPLICABILITY**

The bill applies to nonrecourse civil litigation purchase agreements with a consumer, defined as a person who (1) resides or is domiciled in Connecticut, (2) has a pending civil action, and (3) is represented by an



attorney at the time he or she receives any funds from the civil litigation funding company.

The bill provides that the state has jurisdiction over any action on the part of a person or entity that enters into a nonrecourse civil litigation purchase agreement with a Connecticut consumer.

**NONRECOURSE CIVIL LITIGATION PURCHASE AGREEMENT REQUIREMENTS**

Under the bill, all nonrecourse civil litigation companies and their employees, agents, subsidiaries, successors, and assigns who enter into nonrecourse civil litigation purchase agreements must also ensure that the agreement:

1. complies with Connecticut consumer contract laws, and
2. is filled in completely and contains a DCP-approved disclosure statement on the first page, in 12-point or larger bold type, with a heading entitled "Disclosure Statement" listing: (a) the total amount to be advanced to the consumer; (b) itemization of all fees; (c) the annual percentage fee or rate of return, including frequency of compounding; and (d) the total amount to be repaid by the consumer, calculated at six-month intervals up to 36 months, including all fees and any minimum required payment.

All nonrecourse civil litigation purchase agreements must also:

1. provide that the consumer may cancel the agreement within five business days following the consumer's receipt of funds, without penalty or further obligation. The agreements must contain the following notice, written clearly and conspicuously: "CONNECTICUT CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS AGREEMENT WITHOUT PENALTY OR FURTHER OBLIGATION NOT LATER THAN FIVE BUSINESS DAYS AFTER THE DATE YOU RECEIVE FUNDING FROM (insert the name of the nonrecourse civil litigation

- company.)”;
2. specify that for the cancellation to be effective, the consumer must either (a) return the nonrecourse civil litigation company’s uncashed check or (b) within five days of receiving the funds, mail the company a notice of cancellation with either the company’s check, a registered or certified check, or a money order for the full amount of the disbursed funds by insured, registered, or certified mail;
  3. be initialed on each page by the consumer. and contain the following notice immediately above the consumer’s signature in 12-point or larger bold type: “DO NOT SIGN THIS NONRECOURSE CIVIL LITIGATION PURCHASE AGREEMENT BEFORE YOU READ IT COMPLETELY OR IF IT CONTAINS ANY BLANK SPACE. YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY BEFORE YOU SIGN THIS AGREEMENT. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT.”;
  4. contain a written acknowledgment by the consumer’s attorney of record stating the attorney has reviewed the agreement and explained all of its terms to the consumer;
  5. be printed in both English and Spanish, unless the oral negotiations are conducted in another language, in which case (a) the agreement’s principal terms (all the terms listed above) must be translated in writing into the consumer’s native language, (b) the consumer must sign the translated document containing the principal terms and initial each page, and (c) the translator must sign a notarized affirmation confirming that the principal terms have been presented to the consumer in his or her native language and acknowledged by the consumer, in writing;
  6. not require mandatory arbitration to resolve disputes between the parties; and

7. state, if the agreement provides for attorney’s fees and costs in the case of a breach of the agreement by either party, that the fees and costs must be reasonable and may be recovered by the prevailing party, and that any limitation placed on the attorney’s fees and costs must apply equally to both parties.

The bill also prohibits nonrecourse civil litigation companies from assessing interest or fees for any period exceeding 36 months from the date the company enters into nonrecourse civil litigation purchase agreement with a consumer. The agreement must contain the following notice, written clearly and conspicuously: “ASSESSMENT OF INTEREST AND FEES: NO INTEREST OR FEES SHALL BE ASSESSED FOR ANY PERIOD EXCEEDING THIRTY-SIX MONTHS.”

**DEPARTMENT OF CONSUMER PROTECTION REGISTRATION**

The bill requires each nonrecourse civil litigation company to register its name, address, and principal place of business with the DCP. The company must also provide its standard nonrecourse civil litigation purchase agreement form to be used in Connecticut to the DCP commissioner.

**VIOLATIONS**

The bill makes a company’s failure to comply with any of the provisions listed to be a violation of the Connecticut Unfair Trade Practices Act. Such a failure voids the nonrecourse civil litigation purchase agreement with regard to the company’s rights or claims.

**COMMITTEE ACTION**

Banks Committee

Joint Favorable Substitute  
Yea 18 Nay 0 (03/20/2012)