
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)