

By: Thompson of Harris

H.B. No. 3454

A BILL TO BE ENTITLED

AN ACT

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

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

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

TITLE 5. REGULATION OF BUSINESSES, ~~AND~~ SERVICES, AND  
CERTAIN TRANSACTIONS

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

SUBTITLE C. BUSINESS OPERATIONS AND TRANSACTIONS

SECTION 3. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 111 to read as follows:

CHAPTER 111. REGULATION OF CIVIL JUSTICE FUNDING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 111.001. SHORT TITLE. This chapter may be cited as the Civil Justice Funding Act.

Sec. 111.002. DEFINITIONS. In this chapter:

(1) "Advertise" means to publish or disseminate a written, electronic, or printed communication, or to publish, disseminate, circulate, or place directly or indirectly before the public a communication by means of a recorded telephone message or a communication transmitted on radio, television, the Internet, or 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 of money  
4 paid to a civil justice funding company by or on behalf of the  
5 consumer, in addition to the funded amount provided by or on behalf  
6 of the company to a consumer. The term includes an administrative  
7 fee, origination fee, underwriting fee, and other fees, regardless  
8 of how the fee is denominated.

9 (3) "Civil justice funding company" or "company" means  
10 a person that enters into a civil justice funding transaction with a  
11 consumer.

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

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 of money provided  
25 to or on behalf of the consumer in a civil justice funding  
26 transaction. The 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. 111.003. INAPPLICABILITY 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. 111.004. 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. 111.005. FUNDING TRANSACTION NOT LOAN. (a) Nothing in  
7 this chapter shall be construed to cause a civil justice funding  
8 transaction in conformance with this chapter to be considered a  
9 loan or to be 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 laws governing loans  
12 or investment contracts or to regulatory provisions of this state  
13 governing loans or investment contracts.

14 Sec. 111.006. EFFECT OF COMMUNICATION RELATING TO FUNDING  
15 TRANSACTION ON RECOGNIZED PRIVILEGES. A communication between the  
16 consumer's attorney handling the legal claim and the civil justice  
17 funding company that pertains to a civil justice funding  
18 transaction does not limit, waive, or abrogate the scope or nature  
19 of any applicable statutory or common law privilege, including the  
20 work-product doctrine and the attorney-client privilege.

21 Sec. 111.007. PRIORITY OF LIEN. (a) Only the following  
22 liens take priority over a lien of the civil justice funding  
23 company:

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

27 (b) All other liens shall take priority by normal operation

1 of law.

2 Sec. 111.008. CONFLICT WITH OTHER LAW. To the extent that  
3 this chapter conflicts with other law with respect to the  
4 regulation of civil justice funding companies, this chapter  
5 controls.

6 Sec. 111.009. RULES. The Texas Commission of Licensing and  
7 Regulation shall adopt rules necessary to implement this chapter.

8 SUBCHAPTER B. CONTRACT

9 Sec. 111.051. FORM OF CONTRACT. A civil justice funding  
10 contract must:

11 (1) be in writing;

12 (2) contain the initials of the consumer on each page  
13 of the contract; and

14 (3) be completely filled in when presented to the  
15 consumer for signature.

16 Sec. 111.052. RIGHT OF RESCISSION. A civil justice funding  
17 contract must contain inside a text box, in bold type, a right of  
18 rescission permitting the consumer to cancel the contract without  
19 penalty or further obligation if, not later than the fifth business  
20 day after the funding date, the consumer:

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

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

1 money order.

2 Sec. 111.053. DISCLOSURES. (a) A civil justice funding  
3 contract must contain the disclosures required by this section,  
4 which constitute material terms of the contract. The disclosures  
5 must be clear and conspicuous and in at least 12-point bold type,  
6 except as provided by Subsection (f).

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

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

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

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

14 (4) a payment schedule that:

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

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

20 (c) Pursuant to the requirements set forth in Section  
21 111.052, the contract must contain the following statement:

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

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

1 "ii. mail, by insured, certified, or registered United  
2 States mail, to the company at the address specified in the  
3 contract, a notice of cancellation and include in the mailing a  
4 return of the full amount of disbursed funds in the form of the  
5 company's uncashed check or a registered or certified check or  
6 money order."

7 (d) The contract must disclose that:

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

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

15 (3) the consumer and the consumer's attorney must  
16 notify the company of the settlement or adjudication of the legal  
17 claim before the resolution date.

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

27 (f) Immediately above the line for the consumer's

1 signature, the contract must contain the following disclosure in  
2 12-point type: "Do not sign this contract before you read it  
3 completely or if it contains any blank spaces. You are entitled to a  
4 copy of the completed contract. Before you sign this contract, you  
5 should obtain the advice of an attorney. Depending on the  
6 circumstances, you may want to consult a tax, public or private  
7 benefits planning, or financial professional. You acknowledge that  
8 the attorney handling your legal claim has provided no tax, public  
9 or private benefit planning, or financial advice regarding this  
10 transaction."

11 Sec. 111.054. WRITTEN ACKNOWLEDGMENT OF ATTORNEY. (a) The  
12 contract must contain a written acknowledgment by the attorney  
13 representing the consumer in the legal claim attesting to the  
14 following:

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

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

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

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

26 (5) the attorney has not received, or will not receive  
27 at a later date, from the civil justice funding company a referral



1 fee or other form of consideration in connection with the civil  
2 justice funding transaction.

3 (b) If the acknowledgment required by Subsection (a) is not  
4 completed by the attorney representing the consumer in the legal  
5 claim, the contract is void.

6 (c) The contract will remain enforceable if the consumer  
7 terminates the initial attorney or retains a new attorney with  
8 respect to the legal claim, who then completes the acknowledgment  
9 required by Subsection (a).

10 Sec. 111.055. CONTRACT AMOUNT. A civil justice funding  
11 company shall require the contracted amount to be paid to the  
12 company to be a predetermined amount based on periodic intervals  
13 from the funding date through the resolution date, and not an amount  
14 determined as a percentage of the recovery from the legal claim.

15 Sec. 111.056. CONTRACT FILING REQUIREMENT. A civil justice  
16 funding contract must be filed with the department in accordance  
17 with the filing procedures specified by the department.

18 SUBCHAPTER C. REGISTRATION

19 Sec. 111.101. REGISTRATION REQUIRED; APPLICATION. (a) A  
20 civil justice funding company must register with the department  
21 before engaging in civil justice funding transactions in this  
22 state.

23 (b) A civil justice funding company must file a registration  
24 application in the form and manner prescribed by the department.  
25 The application must:

26 (1) contain all information the department requires to  
27 evaluate the character and fitness of the applicant, and if the

1 applicant is an entity, the character and fitness of each officer  
2 and director of the applicant company; and

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

5 Sec. 111.102. BOND; LETTER OF CREDIT. (a) The department  
6 may require an applicant or registrant to file a bond with the  
7 application in an amount not to exceed \$50,000.

8 (b) The bond terms must run concurrent with the registration  
9 period. The bond must provide that the registrant will, during the  
10 registration period:

11 (1) faithfully conform to and abide by:

12 (A) this chapter; and

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

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

17 (c) In lieu of the bond, the applicant or registrant, at the  
18 applicant's or registrant's option, may post an irrevocable letter  
19 of credit.

20 Sec. 111.103. ISSUANCE OF CERTIFICATE OF REGISTRATION. The  
21 department may not issue a certificate of registration unless the  
22 department, following an investigation, determines that the  
23 character and fitness of the applicant and, if the applicant is an  
24 entity, of the applicant company's officers and directors warrant  
25 belief that the business will be operated honestly and fairly and in  
26 accordance with this chapter.

27 Sec. 111.104. HEARING. (a) On written request, the

1 department shall set a hearing before the State Office of  
2 Administrative Hearings to determine an applicant's qualifications  
3 for registration if:

4 (1) the department has notified the applicant in  
5 writing of the denial of the application; or

6 (2) the department has not issued a certificate of  
7 registration before the 61st day after the date the applicant filed  
8 the application.

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

13 Sec. 111.105. RENEWAL OF REGISTRATION. A civil justice  
14 funding company must renew its registration on September 30 every  
15 two years by paying a \$200 renewal fee.

16 SUBCHAPTER D. PROHIBITIONS

17 Sec. 111.151. PROHIBITED ACTIVITIES OR CONDUCT. A civil  
18 justice funding company may not:

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

23 (2) accept any commission, referral fee, rebate, or  
24 other form of consideration from an attorney, law firm, medical  
25 provider, chiropractor, or physical therapist or an employee of  
26 such a person;

27 (3) intentionally advertise materially false or

1 misleading information about the company's products or services;

2 (4) refer, to further an initial legal funding, a  
3 customer or potential customer to a specific attorney, law firm,  
4 medical provider, chiropractor, or physical therapist or an  
5 employee of such a person, except that the company may refer a  
6 customer or potential customer who needs legal representation to a  
7 local or state bar association referral service;

8 (5) fail to promptly provide a copy of the executed  
9 contract to the consumer's attorney;

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

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

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

21 (7) make a decision relating to the conduct,  
22 settlement, or resolution of the underlying legal claim, the power  
23 of which must remain solely with the consumer and the attorney  
24 handling the legal claim; or

25 (8) knowingly pay or offer to pay, using funds from the  
26 civil justice funding transaction, court costs, filing fees, or  
27 attorney's fees during or after the resolution of the legal claim.

1                    SUBCHAPTER E. ENFORCEMENT

2            Sec. 111.201. VIOLATION OF CHAPTER. (a) If a court finds  
3 that a civil justice funding company has intentionally violated  
4 this chapter with respect to a civil justice funding transaction,  
5 the company is entitled to recover only the funded amount provided  
6 to the consumer and is not entitled to recover any additional  
7 charges.

8            (b) Nothing in this chapter shall be construed to restrict  
9 the attorney general from exercising the powers conferred on the  
10 attorney general by law or from performing duties as required by  
11 law.

12            SECTION 4. As soon as practicable after the effective date  
13 of this Act, but not later than January 1, 2016, the Texas  
14 Commission of Licensing and Regulation shall adopt the rules and  
15 procedures necessary to implement Chapter 111, Business & Commerce  
16 Code, as added by this Act.

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

23            SECTION 6. (a) Except as provided by Subsection (b) of this  
24 section, this Act takes effect September 1, 2015.

25            (b) Subchapter C, Chapter 111, Business & Commerce Code, as  
26 added by this Act, takes effect January 1, 2016.