

Nonrecourse Civil Litigation

The Act regulates civil litigation funding companies doing business in the state. Nonrecourse civil litigation funding means a transaction in which a civil litigation funding company purchases and a consumer assigns the contingent right to receive an amount of the potential proceeds of the consumer's legal claim to the civil litigation funding company out of the proceeds of any realized settlement, judgment, award, or verdict the consumer may receive in the legal claim.

Submitted as:

Nebraska

[LB 1094 \(As approved by governor\)](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Title.*] This Act shall be cited as “The Nonrecourse Civil Litigation Act.”

2

3 Section 2. [*Definitions.*] As used in this Act:

4 (1) Civil litigation funding company means a person or entity that enters into a
5 nonrecourse civil litigation funding transaction with a consumer;

6 (2) Consumer means a person residing or domiciled in this state or who elects to enter
7 into a transaction under the Act, whether it be in person, over the Internet, by facsimile, or by
8 any other electronic means, and who has a pending legal claim and is represented by an attorney
9 at the time they receive the nonrecourse civil litigation funding;

10 (3) Legal claim means a civil claim or action; and

11 (4) Nonrecourse civil litigation funding means a transaction in which a civil litigation
12 funding company purchases and a consumer assigns the contingent right to receive an amount of
13 the potential proceeds of the consumer's legal claim to the civil litigation funding company out
14 of the proceeds of any realized settlement, judgment, award, or verdict the consumer may receive
15 in the legal claim.

16

17 Section 3. [*Civil Litigation Funding Company Registration and Certificate.*]

18 (A) Unless a civil litigation funding company has first registered pursuant to this Act, a
19 civil litigation funding company cannot engage in the business of nonrecourse civil litigation
20 funding.

21 (B) A civil litigation funding company shall submit an application of registration to the
22 [Secretary of State] in a form prescribed by the [Secretary of State]. An application filed under
23 this subsection is a public record and shall contain information that allows the [Secretary of
24 State] to make an evaluation of the character, fitness, and financial responsibility of the company
25 such that the [Secretary of State] may determine that the business will be operated honestly or
26 fairly within the purposes of the Act.

27 (C) For purposes of determining a civil litigation funding company's character, fitness,
28 and financial responsibility, the [Secretary of State] shall request a company to submit a copy of
29 the company's articles of incorporation, articles of organization, certificate of limited
30 partnership, or other organizational documents; proof of registration with a [state registered

31 agent]; and proof of a surety bond or irrevocable letter of credit issued and confirmed by a
32 financial institution authorized by law to transact business in this state that is equal to double the
33 amount of the largest funding in the past calendar year or [fifty thousand] dollars, whichever is
34 greater.

35 (D) A civil litigation funding company may apply to renew a registration by submitting
36 an application for renewal in a form prescribed by the [Secretary of State]. An application filed
37 under this subsection is a public record. The registration shall contain current information on all
38 matters required in an original registration.

39 (E) An application for registration or renewal of registration under of this Act shall be
40 accompanied by either an application for registration fee or a renewal of registration fee, as
41 applicable.

42 (F) The [Secretary of State] may, by rule and regulation, establish fees for applications
43 for registration and renewals of registration at rates sufficient to cover the costs of administering
44 this Act, in the event any such fees are required. Such fees shall be collected by the [Secretary of
45 State] and remitted to the [state treasurer] for credit to the [Secretary of State Administration
46 Cash Fund].

47 (G) The [Secretary of State] shall issue a certificate of registration to a civil litigation
48 funding company who complies with this Act.

49 (H) The [Secretary of State] may refuse to issue a certificate of registration if the
50 [Secretary of State] determines that the character, fitness, or financial responsibility of the civil
51 litigation funding company are such as to warrant belief that the business will not be operated
52 honestly or fairly within the purposes of this Act.

53 (I) The [Secretary of State] may suspend, revoke, or refuse to renew a certificate of
54 registration for conduct that would have justified denial of registration under this Act.

55 (J) The [Secretary of State] may deny, suspend, revoke, or refuse to renew a certificate of
56 registration only after proper notice and an opportunity for a hearing under [insert citation].

57 (K) The [Secretary of State] may issue a temporary certificate of registration while an
58 application for registration or renewal of registration is pending.

59 (L) The [Secretary of State] shall require a civil litigation funding company registered
60 pursuant to this Act to [annually] submit certain data, in a form prescribed by the [Secretary of
61 State] that contains:

- 62 (1) The number of nonrecourse civil litigation fundings;
- 63 (2) The amount of nonrecourse civil litigation fundings;
- 64 (3) The number of nonrecourse civil litigation fundings required to be repaid by
65 the consumer;
- 66 (4) The amount charged to the consumer, including, but not limited to, the annual
67 percentage fee charged to the consumer and the itemized fees charged to the consumer; and
- 68 (5) The dollar amount and number of cases in which the realization to the civil
69 litigation funding company was less than contracted.

70 71 Section 4. [*Nonrecourse Civil Litigation Funding Contracts.*]

72 (A) All contracts for nonrecourse civil litigation funding shall comply with the following
73 requirements:

- 74 (1) The contract shall be completely filled in and contain on the front page,
75 appropriately headed and in at least [twelve-point bold] type, the following disclosures:
 - 76 (a) The total dollar amount to be funded to the consumer;
 - 77 (b) An itemization of one-time fees;
 - 78 (c) The total dollar amount to be repaid by the consumer, in [six-month]
79 intervals for [thirty-six] months, and including all fees;

80 (d) The total dollar amount in broker fees that are involved in the
81 transaction; and

82 (e) The annual percentage rate of return, calculated as of the last day of
83 each [six-month] interval, including frequency of compounding;

84 (B) The contract shall provide that the consumer may cancel the contract within [five]
85 business days following the consumer's receipt of funds without penalty or further obligation.

86 (C) The contract shall contain the following notice written in a clear and conspicuous
87 manner:

88
89 "Consumer's Right to Cancellation:

90
91 You may cancel this contract without penalty or further obligation within [five]
92 business days from the date you receive funding from (insert name of civil
93 litigation funding company)."
94

95 The contract also shall specify that in order for the cancellation to be effective, the consumer
96 shall either return the full amount of disbursed funds to the civil litigation funding company by
97 delivering the civil litigation funding company's uncashed check to the civil litigation funding
98 company's offices in person, within [five] business days after the disbursement of funds, or mail
99 a notice of cancellation and include in that mailing a return of the full amount of disbursed funds
100 in the form of the civil litigation funding company's uncashed check or a registered or certified
101 check or money order, by insured, registered, or certified United States mail, postmarked within
102 [five] business days after receiving funds from the civil litigation funding company, to the
103 address specified in the contract for the cancellation;

104 (D) The contract shall contain the following statement in at least [twelve-point] boldface
105 type:

106
107 "The civil litigation funding company agrees that it shall have no right to and will
108 not make any decisions with respect to the conduct of the underlying legal claim
109 or any settlement or resolution thereof and that the right to make those decisions
110 remains solely with you and your attorney in the legal claim."
111

112 (E) The contract shall contain an acknowledgement by the consumer that such consumer
113 has reviewed the contract in its entirety;

114 (F) The contract shall contain the following statement in at least [twelve-point] boldface
115 type located immediately above the place on the contract where the consumer's signature is
116 required:

117
118 "Do not sign this contract before you read it completely or if it contains any blank
119 spaces. You are entitled to a completely filled in copy of this contract. Before you
120 sign this contract you should obtain the advice of an attorney. Depending on the
121 circumstances, you may want to consult a tax, public or private benefit planning,
122 or financial professional. You acknowledge that your attorney in the legal claim
123 has provided no tax, public or private benefit planning, or financial advice
124 regarding this transaction."
125

126 (G) The contract shall contain a written acknowledgment by the attorney representing the
127 consumer in the legal claim that states all of the following:

128 (1) The attorney representing the consumer in the legal claim has reviewed the
129 contract and all costs and fees have been disclosed including the annualized rate of return applied
130 to calculate the amount to be paid by the consumer;

131 (2) The attorney representing the consumer in the legal claim is being paid on a
132 contingency basis per a written fee agreement;

133 (3) All proceeds of the civil litigation will be disbursed via the trust account of the
134 attorney representing the consumer in the legal claim or a settlement fund established to receive
135 the proceeds of the civil litigation from the defendant on behalf of the consumer;

136 (4) The attorney representing the consumer in the legal claim is following the
137 written instructions of the consumer with regard to the nonrecourse civil litigation funding;

138 (5) The attorney representing the consumer in the legal claim shall not be paid or
139 offered to be paid commissions or referral fees; and

140 (6) Whether the attorney representing the consumer in the legal claim does or
141 does not have a financial interest in the civil litigation funding company; and

142 (H) All contracts to the consumer shall have in plain language, in a box with bold
143 [fifteen-point] font stating the following in capitalized letters:

144

145 "If there is no recovery of any money from your legal claim or if there is not
146 enough money to pay the civil litigation funding company back in full, you will
147 not owe the civil litigation funding company anything in excess of your recovery
148 unless you have violated this purchase agreement."

149

150 (I) If a dispute arises between the consumer and the civil litigation funding company
151 concerning the contract for nonrecourse civil litigation funding, the responsibilities of the
152 attorney representing the consumer in the legal claim shall be no greater than the attorney's
153 responsibilities under [insert citation].

154

155 Section 5. [*Civil Litigation Funding Company Commissions and Fees.*]

156 (A) The civil litigation funding company shall not pay or offer to pay commissions or
157 referral fees to any attorney or employee of a law firm or to any medical provider, chiropractor,
158 or physical therapist or their employees for referring a consumer to the civil litigation funding
159 company.

160 (B) The civil litigation funding company shall not accept any commissions, referral fees,
161 or rebates from any attorney or employee of a law firm or any medical provider, chiropractor, or
162 physical therapist or their employees.

163 (C) The civil litigation funding company shall not advertise false or intentionally
164 misleading information regarding such company's product or services.

165 (D) The civil litigation funding company shall not knowingly provide nonrecourse civil
166 litigation funding to a consumer who has previously sold and assigned an amount of such
167 consumer's potential proceeds from the legal claim to another civil litigation funding company
168 without first buying out that civil litigation funding company's entire accrued balance unless
169 otherwise agreed in writing by the civil litigation funding companies and the consumer.

170 (E) A civil litigation funding company may not assess fees for any period exceeding
171 [thirty-six] months from the date of the contract with the consumer.

172 (F) Fees assessed by the civil litigation funding company shall compound at least
173 [semiannually] but shall not compound based on any lesser time period.

174 (G) In calculating the annual percentage fee or rate of return, a civil litigation funding
175 company shall include all charges payable directly or indirectly by the consumer and shall
176 compute the rate based only on amounts actually received and retained by a consumer.

177 (H) No communication between the attorney and the civil litigation funding company as
178 it pertains to the nonrecourse civil litigation funding contract shall limit, waive, or abrogate the
179 scope or nature of any statutory or common-law privilege, including the work-product doctrine
180 and the attorney-client privilege.

181
182 Section 6. [*Report.*] The [Secretary of State] shall [annually] prepare and submit a report
183 to the [Clerk of the Legislature] and to the [Judiciary Committee of the Legislature] about the
184 status of nonrecourse civil litigation funding activities in the state. The report shall include
185 aggregate information reported by registered civil litigation funding companies.

186
187 Section 7. [*Funding.*]

188 (A) There is hereby created the [Nonrecourse Civil Litigation Administration Cash Fund].
189 The fund shall consist of revenue received to defray costs as authorized in this Act of this Act.
190 The revenue shall be collected by the [Secretary of State] and remitted to the [State Treasurer]
191 for credit to the fund.

192 (B) Any money in the fund available for investment shall be invested by the [state
193 investment officer] pursuant to [insert citation].

194
195 Section 8. [*Severability.*] [Insert severability clause.]

196
197 Section 9. [*Repealer.*] [Insert repealer clause.]

198
199 Section 10. [*Effective Date.*] [Insert effective date.]