

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 6179-01
Bill No.: SB 967
Subject: Attorneys; Banks and Financial Institutions; Bonds- Surety; Business and Commerce; Consumer Protection; Contracts and Contractors; Credit and Bankruptcy; Fees; Department of Insurance, Financial Institutions and Professional Registration
Type: Original
Date: February 27, 2018

Bill Summary: This proposal establishes the “Litigation Financing Consumer Protection Act.”

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
General Revenue	Less than \$20,000	Less than \$20,000	Less than \$20,000
Total Estimated Net Effect on General Revenue	Less than \$20,000	Less than \$20,000	Less than \$20,000

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on Other State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2019	FY 2020	FY 2021
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Attorney General's Office (AGO)** state that their department would require 1 FTE AAG (\$45,500/annually) to meet the enforcement and investigative demands outlined in 408.910 of this proposal.

Oversight assumes AGO is provided with core funding to handle a certain amount of activity each year. Oversight assumes AGO could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, AGO could request funding through the appropriation process.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration (DIFP)** state that it is unknown how many litigation financiers may need to be registered under the provisions of this bill. The Division of Finance believes it can absorb the potential registration for a small number of entities. However, should the number of entities be greater than anticipated, the Division of Finance would request additional appropriation and/or FTE through the budget process.

Oversight assumes income of less than \$20,000 from applications (\$100) and amended filing fees (\$20) in Section 4436.610.2(2)(b) and 436.610.4, RSMo.

Officials from the **Office of the State Courts Administrator** assume this legislation could have some impact but there is no way to quantify that currently. Any significant changes will be reflected in future budget requests.

<u>FISCAL IMPACT - State Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
GENERAL REVENUE FUND			
<u>Revenue - DIFP</u>	Less than	Less than	Less than
Registration Fees	<u>\$20,000</u>	<u>\$20,000</u>	<u>\$20,000</u>
§4436.610.2(b) and §436.610.4			
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	Less than <u>\$20,000</u>	Less than <u>\$20,000</u>	Less than <u>\$20,000</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2019 (10 Mo.)	FY 2020	FY 2021
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

Under this act, no person shall engage in litigation financing unless registered with the Division of Finance within the Department of Insurance, Financial Institutions and Professional Registration. This act sets forth registration requirements based upon if such person is a business entity or partnership, or is neither. If such person is not a business entity or partnership, the person shall be required to file an application for registration as a litigation financier, and pay a filing fee of \$100.

Further, each litigation financier shall also file a \$50,000 surety bond with the Division of Finance, with such bond being used by the Attorney General and any person who may have a cause of action against the obligor of the bond. If a litigation financier's information changes, they shall amend their registration with the Division of Finance and shall pay a \$20 fee. All documents filed under this act shall be considered a public record.

FISCAL DESCRIPTION (continued)

This act requires a litigation financier to meet certain requirements set forth in this act, including setting forth the terms of the litigation financing transaction in a written contract that is completely filled in, requiring such contract to have a right of rescission allowing the consumer to cancel within 5 business days, requiring such contract contain a written acknowledgment of whether the consumer is represented by an attorney, and if so, acknowledgments on behalf of such attorney, and if proceeds are paid into a settlement fund, the financier shall notify the administrator of the fund of any outstanding liens from the litigation financing contract.

This act prohibits litigation financiers from taking certain actions, including paying or accepting commissions or referral fees from certain entities, advertising false or misleading information, referring a consumer to a specific entity, failing to provide copies of all litigation financing contracts to the consumer and their attorney, attempting to obtain a waiver of any remedy, attempting to affect arbitration, offering legal advice, and assigning a litigation financing contract.

This act requires litigation financing contracts to contain certain disclosures. On the front page of the contract, such disclosures shall include the total amount of money provided to the consumer, the maximum amount the consumer can be required to provide to the litigation financier, the maximum annual percentage fee, and the consumer's right to cancellation. This act also requires that the contract contain a provision stating that if there is no recovery of any money from the consumer's legal claim or enough to satisfy the portion assigned to the financier in full, that the consumer will not owe such financier anything in excess of such consumer's recovery. The contract shall also include a provision immediately above the place where the consumer's signature is required, as set forth in this act.

Under this act, the contingent right to receive an amount of the potential proceeds of a legal claim may be assigned by a consumer, and a lien on such consumer's legal claim shall take priority over any lien of the litigation financier.

All consumers entering into litigation financing transactions shall pay a maximum interest rate not to exceed 17% per year. Such transactions shall not exceed a term of 3 years, and are limited to a maximum yearly fee not to exceed \$360 per year for each \$1,000 of unpaid principal funds advanced to the consumer. Further, such litigation financiers shall not enter into an agreement with the consumer that incorporates an original litigation financing transaction into a subsequent litigation financing transaction.

FISCAL DESCRIPTION (continued)

Any violation of this act shall make the litigation financing contract unenforceable. Further, any violation shall constitute an unlawful practice under merchandising practices provisions of law, and shall be enforced by the Attorney General.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Insurance, Financial Institutions and Professional Registration
Attorney General's Office
Office of the State Courts Administrator

Ross Strobe



Acting Director
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