

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 1269S.01I  
Bill No.: SB 342  
Subject: Consumer Protection; Department of Commerce and Insurance; Fees; Civil Penalties  
Type: Original  
Date: March 20, 2023

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Bill Summary: This proposal creates provisions related to consumer legal funding and litigation financing.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Total Estimated Net Effect on General Revenue</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
Division of Finance*	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\*Revenues and Expenses Net to zero.

Numbers within parentheses: () indicate costs or losses.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Total Estimated Net Effect on FTE</b>	<b>0</b>	<b>0</b>	<b>0</b>

- Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.
- Estimated Net Effect (savings or increased revenues) expected to exceed \$250,000 in any of the three fiscal years after implementation of the act or at full implementation of the act.

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
<b>FUND AFFECTED</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

## FISCAL ANALYSIS

### ASSUMPTION

#### Sections 436.550 – 436.580- Consumer Legal Funding Model Act

Officials from the **Department of Commerce and Insurance (DCI) – Division of Finance (DOF)** state DOF currently licenses and regulates these types of businesses under Chapter 367. As these businesses transition to new licenses under Sections 436.550-436.570, DOF estimates 10-15 licenses would move from Chapter 367 to Chapter 436.

DOF assumes the following:

Section 436.570.2 requires an initial application fee of \$500 and an annual license renewal fee \$500. For the purposes of this estimate, DOF has assumed the same number of businesses would participate in this program as are currently licensed under Chapter 367 which would generate revenue of \$5,000 - \$7,500 annually, which would be credited to the Division of Finance Fund (0550).

Sections 436.571-436.580 provide for the licensing of Civil Litigation Financing companies DOF. DOF cannot provide an estimate of the number of companies that may file for this type of license. Section 436.572.3 requires an initial application fee of \$550 and an annual license renewal fee \$550. This fiscal estimate is based on one company licensed under these sections. Each licensee would be subject to an examination by DOF every two years. DOF assumes that these exams would be divided so that one-half of the licensees would be examined each year. Examinations are estimated to take 8.53-9.53 hours at an hourly rate of \$85.00 per hour for personal services and expenses. For 5-8 examinations per year, the estimated cost is (\$4,050-\$5,800).

Processing of applications and licenses and overhead costs are estimated at \$150 per license. For 10-15 licensees, the estimated annual cost is (\$1,500-\$2,250). Additional hours and costs would be necessary if hearings are requested for either type of license. For the purposes of this estimate, DOF assumes there would be no hearings required for Consumer Legal Funding nor Consumer Litigation Financing Act Licensees.

DOF is allowed to impose administrative fines of up to \$1,000 on Consumer Legal Funding companies that knowingly and willfully violate these sections. For the purposes of this estimate, DOF assumes there will be no violations of these sections. DOF assumes the workload for Sections 436.550-436.570 would be shifted to existing staff, replacing the workload lost from Chapter 367 licenses and paid by the Division of Finance Fund (0550).

Listed below is a summary of expenses to the Division of Finance Fund as estimated by DCI-DOF:

<b>Expenses</b>	
Chapter 367 Licenses	(\$5,000) – (\$7,000)
Chapter 367 Exams	\$3,801 - \$5,322
Chapter 367 Administration	\$1,199 - \$2,178
Chapter 436 Licenses – Consumer Legal Funding	\$5,000 - \$7,000
Chapter 436 Licenses – Consumer Litigation Financing	\$550
Chapter 436 Exams	(\$4,050) – (\$5,800)
Chapter 436 Administration	(\$1,500) – (\$2,250)
<b>Net Effect</b>	<b>\$0</b>

**Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a revenue of \$5,000 to \$7,000 and a cost of \$5,000 to \$7,000 that nets to a zero fiscal impact to the Division of Finance Fund (0550).

Rule Promulgation

Officials from the **Joint Committee on Administrative Rules** assume this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

In response to a previous version, officials from the **Office of the Secretary of State (SOS)** noted many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$5,000. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with its core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

In response to a similar bill from this year (HB 628), officials from the **Attorney General's Office** assumed the proposal will have no fiscal impact on their organization. **Oversight** does not have any information to the contrary. Therefore, Oversight will reflect a zero impact in the fiscal note for the AGO.

<u>FISCAL IMPACT – State Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
<b>DIVISION OF FINANCE FUND (0550)</b>			
<u>Revenue</u> – DCI Annual & Renewal License Fees	\$5,000 - \$7,000	\$5,000 - \$7,000	\$5,000 - \$7,000
<u>Cost</u> – DCI Shifting licenses to new Chapter	(\$5,000) – (\$7,000)	(\$5,000) – (\$7,000)	(\$5,000) – (\$7,000)
<b>ESTIMATED NET EFFECT TO THE DIVISION OF FINANCE FUND (0550)</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

<u>FISCAL IMPACT – Local Government</u>	FY 2024 (10 Mo.)	FY 2025	FY 2026
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT – Small Business

A litigator financier business could have a direct fiscal impact as a result of this proposal.

FISCAL DESCRIPTION

This act creates the "Consumer Legal Funding Act" with several definitions including "Consumer Legal Funding Contract" in which a consumer legal funding company purchases and a consumer assigns to the company a contingent right to receive potential proceeds from a settlement, judgment, award, or verdict obtained in the consumer's legal claim. The act provides for requirements to be included in the contract. The company must provide the consumer's attorney with a written notice of the contract within three business days of the funding date. The contract is only to be entered into if a valid legal claim exists and it is not valid if its terms exceed a period of forty-eight months.

Additionally, the act details actions that cannot be taken by the company, such as paying or offering to pay or accepting commissions, referral fees, or other forms of consideration from an attorney, certain healthcare providers, or intentionally advertising false or misleading information; or receiving any right to make decisions relating to the conduct of the underlying legal claim or resolution thereof.

Under this act, all consumer legal funding contracts must contain disclosures regarding material terms of the contract. The act provides for specific language to be included in the body of the contract, such as the total amount assigned by the consumer; itemization of one-time charges; payment schedule; and other specifics.

The act provides that only attorney's liens related to the legal claim, Medicare, or other statutory liens related to the legal claim take priority over claims to proceeds from the consumer legal funding company.

Under this act, a consumer legal funding company shall not engage in the business of consumer legal funding in the state of Missouri, unless it first obtained a license from the Division of Finance. The initial or renewal license applications must be in writing, made under oath, and on the form provided by the Director of the Department of Finance. The act provides for fees associated with licensing.

Under this act, if the Director of the Division of Finance determines that any consumer legal funding company fails to meet its obligations under this act, or any provisions relating to consumer legal funding, the Director may issue an order to cease and desist which is enforceable by a civil penalty of no more than one thousand dollar per day for each day a violation occurs. Furthermore, if any consumer legal funding company fails to comply with the provision of this act, or any laws relating to consumer legal funding, its license may be suspended or revoked by the Director of the Division of Finance. The Division of Finance may also investigate and examine each consumer funding company as necessary to carry out this act. Additionally, this act creates the "Consumer Litigation Financing Act". "Litigation financing transaction" is defined as financing provided to a consumer in return for the consumer assigning a contingent right to receive moneys from the settlement, judgment, award, or verdict from a consumer's legal claim. Under this act, all civil litigation funding must meet certain requirements. This act applies to any class actions but does not apply to litigation financing provided to commercial enterprises.

Under this act, every litigation financier shall not engage in the business of consumer legal funding unless it has first obtained a license from the Division of Finance and met certain requirements, including the posting of a surety bond not to exceed fifty thousand dollars. Additionally, the Director of the Division of Finance may deny, suspend, revoke, and place other restrictions on the issuance of the license if a litigation financier is in violation of this act. This act details actions that cannot be taken by the litigation financier similarly to the actions that cannot be taken by the consumer legal company. The written contract must be completely filled in. Also, the act provides for the disclosures to be included in the contract which are regarded as material terms of the contract. The existence of litigation financing arrangements are subject to discovery in personal injury litigation.

Under this act, in the event a litigation financier fails to perform its obligations under this act, the Director of the Division of Finance may take disciplinary actions similar to the disciplinary actions when a consumer legal funding company is in violation of this act.

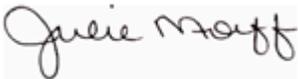
Under this act, the terms of the litigation financing agreement must contain disclosures, constituted as material terms of the litigation financing contract. The act details requirements of the construction of the litigation financing agreement.

Under this act, the practice of litigation financing is regulated by the Division of Finance and any violation of the provision in this act make the contract unenforceable by the parties or any successor-in-interest.

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

Attorney General's Office  
Office of the Secretary of State  
Department of Commerce and Insurance  
Joint Committee on Administrative Rules  
Office of the State Courts Administrator



Julie Morff  
Director  
March 20, 2023



Ross Strobe  
Assistant Director  
March 20, 2023