



# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Senate Bill 373 be amended to read as follows:

- 1           Replace the effective dates in SECTIONS 2 through 3 with
- 2           "[EFFECTIVE UPON PASSAGE]".
- 3           Page 1, delete lines 1 through 5, begin a new paragraph and insert:
- 4           "SECTION 1. IC 4-21.5-3-6, AS AMENDED BY P.L.153-2011,
- 5           SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 6           UPON PASSAGE]: Sec. 6. (a) Notice shall be given under this section
- 7           concerning the following:
- 8           (1) A safety order under IC 22-8-1.1.
- 9           (2) Any order that:
- 10           (A) imposes a sanction on a person or terminates a legal right,
- 11           duty, privilege, immunity, or other legal interest of a person;
- 12           (B) is not described in section 4 or 5 of this chapter or
- 13           IC 4-21.5-4; and
- 14           (C) by statute becomes effective without a proceeding under
- 15           this chapter if there is no request for a review of the order
- 16           within a specified period after the order is issued or served.
- 17           (3) A notice of program reimbursement or equivalent
- 18           determination or other notice regarding a hospital's
- 19           reimbursement issued by the office of Medicaid policy and
- 20           planning or by a contractor of the office of Medicaid policy and
- 21           planning regarding a hospital's year end cost settlement.
- 22           (4) A determination of audit findings or an equivalent
- 23           determination by the office of Medicaid policy and planning or by
- 24           a contractor of the office of Medicaid policy and planning arising
- 25           from a Medicaid postpayment or concurrent audit of a hospital's
- 26           Medicaid claims.
- 27           (5) A license revocation **or suspension** under:

- 1 (A) IC 24-4.4-2;  
 2 (B) IC 24-4.5-3;  
 3 (C) IC 28-1-29;  
 4 (D) IC 28-7-5;  
 5 (E) IC 28-8-4; or  
 6 (F) IC 28-8-5.
- 7 (6) An order issued by the:  
 8 (A) division of aging or the bureau of aging services; or  
 9 (B) division of disability and rehabilitative services or the  
 10 bureau of developmental disabilities services;  
 11 against providers regulated by the division of aging or the bureau  
 12 of developmental disabilities services and not licensed by the  
 13 state department of health under IC 16-27 or IC 16-28.
- 14 **(7) The denial, suspension, or revocation of a certificate of**  
 15 **registration under IC 24-11.**
- 16 (b) When an agency issues an order described by subsection (a), the  
 17 agency shall give notice to the following persons:  
 18 (1) Each person to whom the order is specifically directed.  
 19 (2) Each person to whom a law requires notice to be given.
- 20 A person who is entitled to notice under this subsection is not a party  
 21 to any proceeding resulting from the grant of a petition for review  
 22 under section 7 of this chapter unless the person is designated as a  
 23 party in the record of the proceeding.
- 24 (c) The notice must include the following:  
 25 (1) A brief description of the order.  
 26 (2) A brief explanation of the available procedures and the time  
 27 limit for seeking administrative review of the order under section  
 28 7 of this chapter.  
 29 (3) Any other information required by law.
- 30 (d) An order described in subsection (a) is effective fifteen (15) days  
 31 after the order is served, unless a statute other than this article specifies  
 32 a different date or the agency specifies a later date in its order. This  
 33 subsection does not preclude an agency from issuing, under  
 34 IC 4-21.5-4, an emergency or other temporary order concerning the  
 35 subject of an order described in subsection (a).
- 36 (e) If a petition for review of an order described in subsection (a) is  
 37 filed within the period set by section 7 of this chapter and a petition for  
 38 stay of effectiveness of the order is filed by a party or another person  
 39 who has a pending petition for intervention in the proceeding, an  
 40 administrative law judge shall, as soon as practicable, conduct a  
 41 preliminary hearing to determine whether the order should be stayed in  
 42 whole or in part. The burden of proof in the preliminary hearing is on  
 43 the person seeking the stay. The administrative law judge may stay the  
 44 order in whole or in part. The order concerning the stay may be issued  
 45 after an order described in subsection (a) becomes effective. The  
 46 resulting order concerning the stay shall be served on the parties and

1 any person who has a pending petition for intervention in the  
 2 proceeding. It must include a statement of the facts and law on which  
 3 it is based.

4 SECTION 2. IC 4-21.5-3-7, AS AMENDED BY P.L.6-2012,  
 5 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6 UPON PASSAGE]: Sec. 7. (a) To qualify for review of a personnel  
 7 action to which IC 4-15-2.2 applies, a person must comply with  
 8 IC 4-15-2.2-42. To qualify for review of any other order described in  
 9 section 4, 5, or 6 of this chapter, a person must petition for review in a  
 10 writing that does the following:

11 (1) States facts demonstrating that:

12 (A) the petitioner is a person to whom the order is specifically  
 13 directed;

14 (B) the petitioner is aggrieved or adversely affected by the  
 15 order; or

16 (C) the petitioner is entitled to review under any law.

17 (2) Includes, with respect to determinations of notice of program  
 18 reimbursement and audit findings described in section 6(a)(3) and  
 19 6(a)(4) of this chapter, a statement of issues that includes:

20 (A) the specific findings, action, or determination of the office  
 21 of Medicaid policy and planning or of a contractor of the  
 22 office of Medicaid policy and planning from which the  
 23 provider is appealing;

24 (B) the reason the provider believes that the finding, action, or  
 25 determination of the office of Medicaid policy and planning or  
 26 of a contractor of the office of Medicaid policy and planning  
 27 was in error; and

28 (C) with respect to each finding, action, or determination of  
 29 the office of Medicaid policy and planning or of a contractor  
 30 of the office of Medicaid policy and planning, the statutes or  
 31 rules that support the provider's contentions of error.

32 Not more than thirty (30) days after filing a petition for review  
 33 under this section, and upon a finding of good cause by the  
 34 administrative law judge, a person may amend the statement of  
 35 issues contained in a petition for review to add one (1) or more  
 36 additional issues.

37 (3) Is filed:

38 (A) with respect to an order described in section 4, 5, 6(a)(1),  
 39 6(a)(2), ~~or 6(a)(5)~~, **or 6(a)(7)** of this chapter, with the ultimate  
 40 authority for the agency issuing the order within fifteen (15)  
 41 days after the person is given notice of the order or any longer  
 42 period set by statute; or

43 (B) with respect to a determination described in section 6(a)(3)  
 44 or 6(a)(4) of this chapter, with the office of Medicaid policy  
 45 and planning not more than one hundred eighty (180) days  
 46 after the hospital is provided notice of the determination.

1           The issuance of an amended notice of program reimbursement by  
 2           the office of Medicaid policy and planning does not extend the  
 3           time within which a hospital must file a petition for review from  
 4           the original notice of program reimbursement under clause (B),  
 5           except for matters that are the subject of the amended notice of  
 6           program reimbursement.

7           If the petition for review is denied, the petition shall be treated as a  
 8           petition for intervention in any review initiated under subsection (d).

9           (b) If an agency denies a petition for review under subsection (a)  
 10          and the petitioner is not allowed to intervene as a party in a proceeding  
 11          resulting from the grant of the petition for review of another person, the  
 12          agency shall serve a written notice on the petitioner that includes the  
 13          following:

- 14               (1) A statement that the petition for review is denied.  
 15               (2) A brief explanation of the available procedures and the time  
 16               limit for seeking administrative review of the denial under  
 17               subsection (c).

18          (c) An agency shall assign an administrative law judge to conduct  
 19          a preliminary hearing on the issue of whether a person is qualified  
 20          under subsection (a) to obtain review of an order when a person  
 21          requests reconsideration of the denial of review in a writing that:

- 22               (1) states facts demonstrating that the person filed a petition for  
 23               review of an order described in section 4, 5, or 6 of this chapter;  
 24               (2) states facts demonstrating that the person was denied review  
 25               without an evidentiary hearing; and  
 26               (3) is filed with the ultimate authority for the agency denying the  
 27               review within fifteen (15) days after the notice required by  
 28               subsection (b) was served on the petitioner.

29          Notice of the preliminary hearing shall be given to the parties, each  
 30          person who has a pending petition for intervention in the proceeding,  
 31          and any other person described by section 5(d) of this chapter. The  
 32          resulting order must be served on the persons to whom notice of the  
 33          preliminary hearing must be given and include a statement of the facts  
 34          and law on which it is based.

35          (d) If a petition for review is granted, the petitioner becomes a party  
 36          to the proceeding and the agency shall assign the matter to an  
 37          administrative law judge or certify the matter to another agency for the  
 38          assignment of an administrative law judge (if a statute transfers  
 39          responsibility for a hearing on the matter to another agency). The  
 40          agency granting the administrative review or the agency to which the  
 41          matter is transferred may conduct informal proceedings to settle the  
 42          matter to the extent allowed by law."

43          Page 5, between lines 13 and 14, begin a new line block indented  
 44          and insert:

45               **"(6) "Department" refers to the members of the department**  
 46               **of financial institutions.**

- 1           **(7) "Director" refers to the director of the department of**
- 2           **financial institutions or the director's designee."**
- 3           Page 5, line 14, delete "(6)" and insert "**(8)**".
- 4           Page 5, line 17, delete "(7)" and insert "**(9)**".
- 5           Page 5, line 23, delete "(8)" and insert "**(10)**".
- 6           Page 5, line 30, delete "(9)" and insert "**(11)**".
- 7           Page 5, line 32, delete "(10)" and insert "**(12)**".
- 8           Page 7, between lines 38 and 39, begin a new paragraph and insert:
- 9           **"Sec. 2. (a) Regardless of the contracted amount that results**
- 10          **under section 1 of this chapter after the elapse of intervals of time**
- 11          **from the funding date through the resolution date, a civil justice**
- 12          **funding company may not assess or collect, with respect to any one**
- 13          **(1) civil justice funding, total charges that exceed twenty-five**
- 14          **percent (25%) of the funded amount.**
- 15          **(b) A civil justice funding company may not:**
- 16               **(1) structure a civil justice funding arising from the same legal**
- 17               **claim:**
- 18                       **(A) as more than one (1) transaction; or**
- 19                       **(B) in any other manner; or**
- 20               **(2) impose any administrative, origination, underwriting, or**
- 21               **other fees, no matter how denominated, in an amount that**
- 22               **grossly exceeds the value of the services provided or costs**
- 23               **incurred by the civil justice funding company in consideration**
- 24               **of the fees;**
- 25          **for the purpose of avoiding the prohibition set forth in subsection**
- 26          **(a)."**
- 27          Page 9, delete lines 26 through 33, begin a new paragraph and
- 28          insert:
- 29          **"Sec. 1. For purposes of this chapter, a violation of, or**
- 30          **compliance with, this article includes a violation of, or compliance**
- 31          **with:**
- 32               **(1) the provisions set forth in this article;**
- 33               **(2) rules adopted by the department under this article;**
- 34               **(3) any policy, guidance document, or order adopted or issued**
- 35               **by the department in connection with this article; or**
- 36               **(4) any other state or federal law, regulation, or rule**
- 37               **applicable to civil justice fundings or civil justice funding**
- 38               **companies.**
- 39          **Sec. 2. (a) The department may examine the books, accounts,**
- 40          **and records of a civil justice funding company and may make**
- 41          **investigations to determine compliance with this article.**
- 42               **(b) A civil justice funding company shall pay all reasonably**
- 43          **incurred costs of an examination under this section in accordance**
- 44          **with the fee schedule adopted under IC 28-11-3-5. A fee established**
- 45          **by the department under IC 28-11-3-5 may be charged for each**
- 46          **day a fee under this section is delinquent.**

1           (c) To discover violations of this article or to secure information  
2 necessary for the enforcement of this article, the department may  
3 investigate any:

4           (1) civil justice funding company that holds a registration  
5 certificate under this article; or

6           (2) person that the department suspects to be operating as a  
7 civil justice funding company in Indiana:

8           (A) without a certificate of registration; or

9           (B) otherwise in violation of this article.

10          The department has all investigatory and enforcement authority  
11 under this chapter that the department has under IC 28-11 with  
12 respect to financial institutions. If the department conducts an  
13 investigation under this section, the registered civil justice funding  
14 company or other person investigated shall pay all reasonably  
15 incurred costs of the investigation in accordance with the fee  
16 schedule adopted under IC 28-11-3-5.

17          Sec. 3. (a) If the department determines that a reasonable belief  
18 exists that a person is operating without a valid certificate of  
19 registration or in violation of this article, the department may  
20 investigate the person.

21          (b) If a person knowingly acts as a civil justice funding company  
22 without a certificate of registration required by IC 24-11-10, any  
23 resulting civil justice funding entered into by the civil justice  
24 funding company and a consumer is void and the consumer is not  
25 required to pay to the civil justice funding company any amounts  
26 in connection with the civil justice funding, including the funded  
27 amount or any charges. If the consumer has paid to the civil justice  
28 funding company any amounts in connection with the civil justice  
29 funding, the consumer, or the department on behalf of the  
30 consumer, is entitled to recover the amounts from the civil justice  
31 funding company.

32          Sec. 4. (a) The department may adopt rules under IC 4-22-2,  
33 including emergency rules adopted in the manner provided by  
34 IC 4-22-2-37.1, to implement this chapter.

35          (b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule  
36 adopted by the department in the manner provided by  
37 IC 4-22-2-37.1 to implement this chapter expires on the date a rule  
38 that supersedes the emergency rule is adopted by the department  
39 under IC 4-22-2-24 through IC 4-22-2-36."

40          Page 9, delete lines 37 through 42.

41          Page 10, delete lines 1 through 3.

42          Page 10, line 4, delete "3." and insert "2."

43          Page 10, delete lines 23 through 42, begin a new paragraph and  
44 insert:

45          "Sec. 1. Except as provided in section 2(g) of this chapter, after  
46 June 30, 2015, a person may not enter into, or offer to enter into,

1 a civil justice funding with a consumer, or otherwise engage in  
2 business as a civil justice funding company:

3 (1) except as authorized by this article; and

4 (2) unless the person first receives a certificate of registration  
5 from the department under this chapter.

6 **Sec. 2. (a)** An applicant for a certificate of registration under  
7 this chapter shall file an application with the department in the  
8 form and manner prescribed by the director. An application form  
9 prescribed by the director under this chapter must require the  
10 applicant to provide the information that the director determines  
11 is necessary to evaluate the character and fitness of the applicant.

12 (b) The department may issue a certificate of registration under  
13 this chapter if the department finds that an applicant's business  
14 will be operated honestly and fairly within the purposes of this  
15 article. If the department denies an application under this chapter,  
16 the director shall provide to the applicant a written notice stating  
17 that the application has been denied and setting forth the reasons  
18 for the denial. In rules adopted under:

19 (1) section 4 of this chapter; or

20 (2) IC 24-11-6-4;

21 the department may set forth circumstances under which a  
22 certificate issued under this chapter may be revoked or suspended  
23 for cause, including the failure of any applicant or certificate  
24 holder to pay an application fee or a renewal fee described in  
25 subsection (f). A notice of a denial, revocation, or suspension issued  
26 by the department under this subsection is effective in accordance  
27 with IC 4-21.5-3-6(d).

28 (c) Upon written request, an applicant for a certificate of  
29 registration under this chapter is entitled to an administrative  
30 review, in the manner provided in IC 4-21.5, of the issue of the  
31 applicant's qualifications for a certificate of registration under this  
32 chapter if either of the following applies:

33 (1) The director provides to the applicant a written notice that  
34 the applicant's application has been denied, as described in  
35 subsection (b), and the applicant files a timely request for a  
36 review under IC 4-21.5-3-7.

37 (2) The department does not issue a decision on the  
38 applicant's application not later than sixty (60) days after the  
39 date the application is filed, and the applicant files a request  
40 for an administrative review in accordance with the  
41 procedures set forth in IC 4-21.5-3-7 not later than  
42 seventy-five (75) days after the date the application is filed.

43 (d) A certificate of registration issued by the department under  
44 this chapter must be renewed with the department on the dates and  
45 in the manner and form prescribed by the director, but not less  
46 frequently than every two (2) years.

47 (e) If, at any time, any information contained in:

1           (1) an initial application under subsection (a); or  
 2           (2) a renewal form or application under subsection (d);  
 3 is or becomes inaccurate or incomplete in a material respect, the  
 4 applicant or registered civil justice funding company promptly  
 5 shall file a correcting amendment with the department in the form  
 6 and manner prescribed by the director.

7           (f) The department may establish, in an amount fixed by the  
 8 department under IC 28-11-3-5, either of the following to cover the  
 9 department's expenses in administering this article:

10           (1) An application fee that an applicant must submit with an  
 11 initial application under subsection (a).

12           (2) A renewal fee that a registered civil justice funding  
 13 company must submit with a renewal form or application  
 14 under subsection (d).

15 The department may impose a fee under IC 28-11-3-5 for each day  
 16 that an application fee or a renewal fee, or any related documents  
 17 that are required to be submitted with an initial application or a  
 18 renewal application, are delinquent.

19           (g) Notwithstanding subsection (a), a person that:

20           (1) before May 13, 2015, enters into one (1) or more civil  
 21 justice fundings that are:

22           (A) made with a consumer in connection with a legal claim;  
 23 and

24           (B) outstanding on July 1, 2015; and

25           (2) submits an application for registration under this chapter  
 26 to the department after June 30, 2015, and before January 1,  
 27 2016;

28 may enter into, or offer to enter into, a civil justice funding with a  
 29 consumer, or otherwise engage in business as a civil justice funding  
 30 company, while the person's application for registration under this  
 31 chapter is pending with the department. However, if the  
 32 department denies the person's application under this chapter, the  
 33 person may not enter into, or offer to enter into, any new civil  
 34 justice funding during the period beginning on the effective date of  
 35 the department's denial under subsection (b) and ending on the  
 36 effective date of any certificate of registration subsequently issued  
 37 to the person by the department under this chapter, subject to the  
 38 person's right to a review under subsection (c) and to any right to  
 39 a stay or an appeal of the denial available under IC 4-21.5. A civil  
 40 justice funding entered into by the person before the effective date  
 41 of the department's denial under subsection (b) is not subject to  
 42 this article, and a civil justice funding entered into by the person  
 43 and a consumer before the effective date of the department's denial  
 44 under subsection (b) remains in effect according to its terms,  
 45 notwithstanding the department's denial of an application  
 46 described in subdivision (2).

47           Sec. 3. (a) Each application for a certificate of registration

1 under section 2 of this chapter must be accompanied by proof that  
 2 the applicant has executed a surety bond in accordance with this  
 3 section.

4 (b) A surety bond issued under this section must:

- 5 (1) be in a form prescribed by the director;  
 6 (2) be in effect during the term of the certificate of  
 7 registration issued under this chapter;  
 8 (3) be payable to the department for the benefit of:  
 9 (A) the state; and  
 10 (B) consumers who enter into a civil justice funding with  
 11 the civil justice funding company;  
 12 (4) be in an amount determined by the director, but not  
 13 greater than fifty thousand dollars (\$50,000); and  
 14 (5) have payment conditioned upon the civil justice funding  
 15 company's or any of the civil justice funding company's  
 16 employees' or agents' noncompliance with or violation of this  
 17 article or other applicable federal or state laws or regulations.

18 (c) Beginning with the first renewal of a certificate of  
 19 registration under this chapter, for each renewal period that a  
 20 registered civil justice funding company continues to engage in  
 21 business as a civil justice funding company in connection with any  
 22 legal claims, the registered civil justice funding company shall file  
 23 a new or an additional surety bond in an amount that ensures that  
 24 the registered civil justice funding company's surety bond under  
 25 this section is equal to the amount determined by the director  
 26 under subsection (b)(4).

27 (d) If the principal amount of a surety bond required under this  
 28 section is reduced by payment of a claim or judgment, the civil  
 29 justice funding company for whom the bond is issued shall  
 30 immediately notify the director of the reduction and, not later than  
 31 thirty (30) days after notice by the director, file a new or an  
 32 additional surety bond in an amount set by the director. The  
 33 amount of the new or additional bond set by the director must be  
 34 at least the amount of the bond before payment of the claim or  
 35 judgment.

36 (e) If for any reason a surety terminates a bond issued under  
 37 this section, the civil justice funding company shall immediately  
 38 notify the department and file a new surety bond in the amount  
 39 determined by the director under subsection (b)(4).

40 (f) Cancellation of a surety bond issued under this section does  
 41 not affect any liability incurred or accrued during the period when  
 42 the surety bond was in effect.

43 (g) The director may obtain satisfaction from a surety bond  
 44 issued under this section if the director incurs expenses, issues a  
 45 final order, or recovers a final judgment under this chapter.

46 Sec. 4. (a) The department may adopt rules under IC 4-22-2,  
 47 including emergency rules adopted in the manner provided by

1 **IC 4-22-2-37.1, to implement this chapter. Rules or emergency**  
2 **rules adopted by the department under this section must take effect**  
3 **by a date that will enable a person to apply to the department for**  
4 **a certificate of registration under this chapter beginning July 1,**  
5 **2015.**  
6 **(b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule**  
7 **adopted by the department in the manner provided by**  
8 **IC 4-22-2-37.1 to implement this chapter expires on the date a rule**  
9 **that supersedes the emergency rule is adopted by the department**  
10 **under IC 4-22-2-24 through IC 4-22-2-36.**  
11 **SECTION 5. An emergency is declared for this act."**  
12 Delete page 11.  
13 Renumber all SECTIONS consecutively.  
(Reference is to SB 373 as printed February 10, 2015.)

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Senator BRAY