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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/19/2020	.	
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	.	

The Committee on Banking and Insurance (Thurston) recommended the following:

1 **Senate Substitute for Amendment (793752) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Part XIII of chapter 559, Florida Statutes,
7 consisting of sections 559.952, 559.953, 559.954, 559.955,
8 559.956, 559.959, and 559.961, is created and may be cited as
9 the "Litigation Financing Consumer Protection Act."

10 Section 2. Section 559.952, Florida Statutes, is created to



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11 read:

12 559.952 Definitions.—As used in this part, the term:

13 (1) "Consumer" means any individual residing, physically
14 present, or domiciled in this state.

15 (2) "Funded amount" means the funds actually received by,
16 or on behalf of, a consumer under a litigation financing
17 contract.

18 (3) "Health care practitioner" has the same meaning as in
19 s. 456.001.

20 (4) "Interest" means the cost of obtaining litigation
21 financing and includes any profit or advantage of any kind
22 whatsoever that a litigation financier may charge, contract for,
23 collect, receive, or in any way obtain as a condition of a
24 litigation financing contract. Charges and fees specifically
25 authorized by this part may not be deemed interest.

26 (5) "Litigation financier" means a person engaged in the
27 business of litigation financing.

28 (6) "Litigation financing" means a nonrecourse transaction
29 in which a litigation financier provides funds to a consumer in
30 exchange for an assignment of the consumer's contingent right to
31 receive an amount of the potential proceeds of his or her civil
32 action or claim. The term does not include any of the following:

33 (a) Legal services provided to a consumer on a contingency
34 fee basis or advanced legal costs, when such services or costs
35 are provided by an attorney representing the consumer in
36 accordance with the Florida Rules of Professional Conduct.

37 (b) A commercial tort claim as defined in s.
38 679.1021(1)(m).

39 (c) Lending or financing arrangements between an attorney



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40 or a law firm and a lending institution to fund litigation
41 costs.

42 (d) A consumer finance loan as defined in s. 516.01.

43 (7) "Net proceeds" means the portion of the proceeds of a
44 civil action or claim remaining after satisfaction of all liens
45 with a higher priority than that of the litigation financier as
46 specified in s. 559.955(2).

47 Section 3. Section 559.953, Florida Statutes, is created to
48 read:

49 559.953 Litigation financing contracts; terms.—The terms of
50 a litigation financing contract must be set forth in a written
51 contract that is completely filled in with no incomplete
52 sections when the contract is presented to the consumer. The
53 contract must contain all of the following:

54 (1) A right of rescission allowing the consumer to cancel
55 the contract without penalty, interest, charges, fees, or
56 further obligation if, within 5 business days after contract
57 execution or funds receipt by the consumer, whichever is later,
58 the consumer provides written rescission notice and returns any
59 funds already provided under the contract to the litigation
60 financier.

61 (2) The consumer's written acknowledgment of whether an
62 attorney represents him or her in the civil action or claim that
63 is the subject of the contract.

64 (3) A statement indicating that, in the event the proceeds
65 of the subject civil action or claim are paid into a settlement
66 fund or trust, the litigation financier must notify the fund or
67 trust administrator of any outstanding financial obligations
68 arising from the contract.



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69 (4) The consumer's initials on each page of the contract
70 and the signature of the consumer on the executed contract.

71 Section 4. Section 559.954, Florida Statutes, is created to
72 read:

73 559.954 Prohibited acts.—A litigation financier may not:

74 (1) Pay or offer to pay a commission, a referral fee, or
75 other consideration to any person, including an attorney, a law
76 firm, or a health care practitioner, for referring a consumer to
77 a litigation financier.

78 (2) Accept a commission, a referral fee, a rebate, or other
79 consideration from any person, including an attorney, a law
80 firm, or a health care practitioner.

81 (3) Advertise false or misleading information about its
82 products or services.

83 (4) Refer a consumer to a specific attorney, law firm, or
84 health care practitioner, except that, if a consumer lacks legal
85 representation, the litigation financier may refer the consumer
86 to an attorney referral service operated by a county or state
87 bar association.

88 (5) Fail to supply a copy of an executed litigation
89 financing contract to the consumer upon execution of a contract.

90 (6) Attempt to obtain a waiver of any remedy, including,
91 but not limited to, compensatory, statutory, or punitive
92 damages, which the consumer might otherwise have in the subject
93 civil action or claim.

94 (7) Attempt to effect arbitration or waiver of a consumer's
95 right to a jury trial in the subject civil action or claim.

96 (8) Offer or provide legal advice to the consumer regarding
97 the litigation financing contract or the subject civil action or



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98 claim.

99 (9) Report to a consumer credit reporting agency if
100 insufficient funds remain from the net proceeds of the subject
101 civil action or claim to repay the litigation financier.

102 (10) Direct, or make any decisions with respect to, the
103 conduct of the subject civil action or claim or any settlement
104 thereof.

105 (11) Enter into a litigation financing contract with a
106 consumer incorporating the consumer's obligations to the
107 litigation financier under an existing litigation financing
108 contract.

109 (12) Knowingly enter into a litigation financing contract
110 with a consumer already under a litigation financing contract
111 with another litigation financier without first paying the
112 entire funded amount and all charges owed under the existing
113 contract, unless the consumer consents to a contemporaneous
114 financing arrangement in writing.

115 (13) Provide litigation financing for a claim under chapter
116 440.

117 Section 5. Section 559.955, Florida Statutes, is created to
118 read:

119 559.955 Required disclosures.—

120 (1) A litigation financing contract must contain all of the
121 following disclosures on the front page of the contract in at
122 least 12-point boldfaced type:

123 (a) Notice of the consumer's right to a copy of the fully
124 executed contract upon execution of the contract.

125 (b) A statement that the litigation financier has no right
126 to and will not make any decisions or attempt to influence the



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127 consumer or his or her attorney about the conduct of the civil
128 action or claim subject to the contract and that the right to
129 make such decisions remains solely with the consumer.

130 (c) The total funded amount provided to the consumer.

131 (d) An itemized list of all charges and fees payable by the
132 consumer.

133 (e) The interest rate.

134 (f) The total amount due from the consumer in 6-month
135 intervals for 3 years, including all charges, fees, and
136 interest.

137 (g) A statement that the consumer will owe no charges,
138 fees, or interest other than those described in the disclosures.

139 (h) The cumulative amount due from the consumer for all
140 litigation financing contracts if the consumer seeks multiple
141 contracts and makes repayment any time after contract execution.

142 (i) Notice that if the consumer recovers nothing from the
143 subject civil action or claim, he or she will owe the litigation
144 financier nothing.

145 (j) Notice that if the net proceeds of the subject civil
146 action or claim are insufficient to fully repay the litigation
147 financier, the litigation financier will accept a reduced sum as
148 full payment of the funded amount and all charges, fees, and
149 interest owed, which sum may not exceed the net proceeds less
150 proceeds specifically awarded for future medical expenses.

151 (2) A litigation financing contract must also contain the
152 following disclosure on the front page of the contract in at
153 least 18-point uppercase and boldfaced type:

154
155 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS



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156 CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER
157 OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT
158 EXECUTION OR RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION
159 FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE
160 CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE
161 LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE
162 POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE
163 DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED
164 MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.

165
166 (3) A litigation financing contract must contain the
167 following disclosure immediately above the consumer's signature
168 line in 18-point uppercase and boldfaced type:

169
170 DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR
171 IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS.
172 BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY.
173 YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL ADVISOR,
174 OR AN ACCOUNTANT.

175 Section 6. Section 559.956, Florida Statutes, is created to
176 read:

177 559.956 Contingent right to proceeds assignable; priority
178 of lien or right to proceeds.-

179 (1) A consumer may assign his or her contingent right to an
180 amount of the potential proceeds of a civil action or claim.

181 (2) A litigation financier's lien on the potential proceeds
182 of a civil action or claim has priority over liens that attach
183 to such proceeds subsequent to the attachment of the litigation
184 financier's lien, except for any of the following:



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185 (a) Attorney, insurer, or health care practitioner liens or
186 liens based upon subrogation interests or reimbursement rights
187 related to the subject civil action or claim.

188 (b) Child support, Medicare, tax, or any other statutory or
189 governmental lien.

190 Section 7. Section 559.959, Florida Statutes, is created to
191 read:

192 559.959 Effect of communication on privilege.—
193 Communications between a consumer's attorney and a litigation
194 financier as it pertains to a litigation financing contract do
195 not limit, waive, or abrogate the scope or nature of any
196 statutory or common-law privilege, including the work-product
197 doctrine and the attorney-client privilege.

198 Section 8. Section 559.961, Florida Statutes, is created to
199 read:

200 559.961 Violation; enforcement.—
201 (1) A violation of this part is an unfair or deceptive
202 trade act or practice under part II of chapter 501.
203 (2) A litigation financing transaction that does not comply
204 with the provisions of this part is void and unenforceable, and
205 the litigation financier has no right to collect, receive, or
206 retain any principal, interest, or charges relating to such
207 transaction.

208 Section 9. This act shall take effect July 1, 2020.

209
210 ===== T I T L E A M E N D M E N T =====

211 And the title is amended as follows:

212 Delete everything before the enacting clause
213 and insert:



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214 A bill to be entitled
215 An act relating to litigation financing consumer
216 protection; creating the Litigation Financing Consumer
217 Protection Act; creating s. 559.952, F.S.; defining
218 terms; creating s. 559.953, F.S.; specifying mandatory
219 litigation financing contract terms; creating s.
220 559.954, F.S.; prohibiting litigation financiers from
221 engaging in specified conduct; creating s. 559.955,
222 F.S.; requiring specified mandatory litigation
223 financing contract disclosures; creating s. 559.956,
224 F.S.; authorizing a consumer to assign his or her
225 contingent right to proceeds from a civil action or
226 claim; establishing the priority of liens against or
227 rights to civil action or claim proceeds; creating s.
228 559.959 , F.S.; providing that specified
229 communications between attorneys and litigation
230 financiers do not limit or waive statutory or common-
231 law privilege; creating s. 559.961, F.S.; providing
232 that a violation of this part is a violation of the
233 Florida Deceptive and Unfair Trade Practices Act;
234 providing that a contract that does not comply with
235 the provisions of this part is void and unenforceable;
236 providing an effective date.