491882

LEGISLATIVE ACTION

Senate	.	House
	.	
	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

Section 2. Section 559.952, Florida Statutes, is created to read:

491882

11 559.952 Definitions.—As used in this part, the term:
12 (1) “Consumer” means any individual residing, physically
13 present, or domiciled in this state.
14 (2) “Funded amount” means the funds actually received by,
15 or on behalf of, a consumer under a litigation financing
16 contract.
17 (3) “Health care practitioner” has the same meaning as in
18 s. 456.001.
19 (4) “Interest” means the cost of obtaining litigation
20 financing and includes any profit or advantage of any kind
21 whatsoever that a litigation financier may charge, contract for,
22 collect, receive, or in any way obtain as a condition of a
23 litigation financing contract. Charges and fees specifically
24 authorized by this part may not be deemed interest.
25 (5) “Litigation financier” means a person engaged in the
26 business of litigation financing.
27 (6) “Litigation financing” means a nonrecourse transaction
28 in which a litigation financier provides funds to a consumer in
29 exchange for an assignment of the consumer’s contingent right to
30 receive an amount of the potential proceeds of his or her civil
31 action or claim. The term does not include any of the following:
32 (a) Legal services provided to a consumer on a contingency
33 fee basis or advanced legal costs, when such services or costs
34 are provided by an attorney representing the consumer in
35 accordance with the Florida Rules of Professional Conduct.
36 (b) A commercial tort claim as defined in s.
37 679.1021(1)(m).
38 (c) Lending or financing arrangements between an attorney
39 or a law firm and a lending institution to fund litigation

491882

40 costs.
41 (d) A consumer finance loan as defined in s. 516.01.
42 (7) "Net proceeds" means the portion of the proceeds of a
43 civil action or claim remaining after satisfaction of all liens
44 with a higher priority than that of the litigation financier as
45 specified in s. 559.955(2).
46 Section 3. Section 559.953, Florida Statutes, is created to
47 read:
48 559.953 Litigation financing contracts; terms.—The terms of
49 a litigation financing contract must be set forth in a written
50 contract that is completely filled in with no incomplete
51 sections when the contract is presented to the consumer. The
52 contract must contain all of the following:
53 (1) A right of rescission allowing the consumer to cancel
54 the contract without penalty, interest, charges, fees, or
55 further obligation if, within 5 business days after contract
56 execution or funds receipt by the consumer, whichever is later,
57 the consumer provides written rescission notice and returns any
58 funds already provided under the contract to the litigation
59 financier.
60 (2) The consumer's written acknowledgment of whether an
61 attorney represents him or her in the civil action or claim that
62 is the subject of the contract.
63 (3) A statement indicating that, in the event the proceeds
64 of the subject civil action or claim are paid into a settlement
65 fund or trust, the litigation financier must notify the fund or
66 trust administrator of any outstanding financial obligations
67 arising from the contract.
68 (4) The consumer's initials on each page of the contract

491882

69 and the signature of the consumer on the executed contract.
70 Section 4. Section 559.954, Florida Statutes, is created to
71 read:
72 559.954 Prohibited acts.—A litigation financier may not:
73 (1) Pay or offer to pay a commission, a referral fee, or
74 other consideration to any person, including an attorney, a law
75 firm, or a health care practitioner, for referring a consumer to
76 a litigation financier.
77 (2) Accept a commission, a referral fee, a rebate, or other
78 consideration from any person, including an attorney, a law
79 firm, or a health care practitioner.
80 (3) Advertise false or misleading information about its
81 products or services.
82 (4) Refer a consumer to a specific attorney, law firm, or
83 health care practitioner, except that, if a consumer lacks legal
84 representation, the litigation financier may refer the consumer
85 to an attorney referral service operated by a county or state
86 bar association.
87 (5) Fail to supply a copy of an executed litigation
88 financing contract to the consumer upon execution of a contract.
89 (6) Attempt to obtain a waiver of any remedy, including,
90 but not limited to, compensatory, statutory, or punitive
91 damages, which the consumer might otherwise have in the subject
92 civil action or claim.
93 (7) Attempt to effect arbitration or waiver of a consumer's
94 right to a jury trial in the subject civil action or claim.
95 (8) Offer or provide legal advice to the consumer regarding
96 the litigation financing contract or the subject civil action or
97 claim.

491882

98 (9) Report to a consumer credit reporting agency if
99 insufficient funds remain from the net proceeds of the subject
100 civil action or claim to repay the litigation financier.
101 (10) Direct, or make any decisions with respect to, the
102 conduct of the subject civil action or claim or any settlement
103 thereof.
104 (11) Enter into a litigation financing contract with a
105 consumer incorporating the consumer's obligations to the
106 litigation financier under an existing litigation financing
107 contract.
108 (12) Knowingly enter into a litigation financing contract
109 with a consumer already under a litigation financing contract
110 with another litigation financier without first paying the
111 entire funded amount and all charges owed under the existing
112 contract, unless the consumer consents to a contemporaneous
113 financing arrangement in writing.
114 (13) Provide litigation financing for a claim under chapter
115 440.
116 Section 5. Section 559.955, Florida Statutes, is created to
117 read:
118 559.955 Required disclosures.—
119 (1) A litigation financing contract must contain all of the
120 following disclosures on the front page of the contract in at
121 least 12-point boldfaced type:
122 (a) Notice of the consumer's right to a copy of the fully
123 executed contract upon execution of the contract.
124 (b) A statement that the litigation financier has no right
125 to and will not make any decisions or attempt to influence the
126 consumer or his or her attorney about the conduct of the civil

491882

127 action or claim subject to the contract and that the right to
128 make such decisions remains solely with the consumer.
129 (c) The total funded amount provided to the consumer.
130 (d) An itemized list of all charges and fees payable by the
131 consumer.
132 (e) The interest rate.
133 (f) The total amount due from the consumer in 6-month
134 intervals for 3 years, including all charges, fees, and
135 interest.
136 (g) A statement that the consumer will owe no charges,
137 fees, or interest other than those described in the disclosures.
138 (h) The cumulative amount due from the consumer for all
139 litigation financing contracts if the consumer seeks multiple
140 contracts and makes repayment any time after contract execution.
141 (i) Notice that if the consumer recovers nothing from the
142 subject civil action or claim, he or she will owe the litigation
143 financier nothing.
144 (j) Notice that if the net proceeds of the subject civil
145 action or claim are insufficient to fully repay the litigation
146 financier, the litigation financier will accept a reduced sum as
147 full payment of the funded amount and all charges, fees, and
148 interest owed, which sum may not exceed the net proceeds less
149 proceeds specifically awarded for future medical expenses.
150 (2) A litigation financing contract must also contain the
151 following disclosure on the front page of the contract in at
152 least 18-point uppercase and boldfaced type:
153
154 CONSUMER’S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS
155 CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER

491882

156 OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT
157 EXECUTION OR RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION
158 FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE
159 CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE
160 LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE
161 POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE
162 DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED
163 MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.
164
165 (3) A litigation financing contract must contain the
166 following disclosure immediately above the consumer's signature
167 line in 18-point uppercase and boldfaced type:
168
169 DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR
170 IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS.
171 BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY.
172 YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL ADVISOR,
173 OR AN ACCOUNTANT.
174 Section 6. Section 559.956, Florida Statutes, is created to
175 read:
176 559.956 Contingent right to proceeds assignable; priority
177 of lien or right to proceeds.—
178 (1) A consumer may assign his or her contingent right to an
179 amount of the potential proceeds of a civil action or claim.
180 (2) A litigation financier's lien on the potential proceeds
181 of a civil action or claim has priority over liens that attach
182 to such proceeds subsequent to the attachment of the litigation
183 financier's lien, except for any of the following:
184 (a) Attorney, insurer, or health care practitioner liens or

491882

185 liens based upon subrogation interests or reimbursement rights
186 related to the subject civil action or claim.
187 (b) Child support, Medicare, tax, or any other statutory or
188 governmental lien.
189 Section 7. Section 559.959, Florida Statutes, is created to
190 read:
191 559.959 Effect of communication on privilege.—
192 Communications between a consumer's attorney and a litigation
193 financier as it pertains to a litigation financing contract do
194 not limit, waive, or abrogate the scope or nature of any
195 statutory or common-law privilege, including the work-product
196 doctrine and the attorney-client privilege.
197 Section 8. Section 559.961, Florida Statutes, is created to
198 read:
199 559.961 Violation; enforcement.—
200 (1) A violation of this part is an unfair or deceptive
201 trade act or practice under part II of chapter 501.
202 (2) A litigation financing transaction that does not comply
203 with the provisions of this part is void and unenforceable, and
204 the litigation financier has no right to collect, receive, or
205 retain any principal, interest, or charges relating to such
206 transaction.
207 Section 9. This act shall take effect July 1, 2020.
208
209 ========== T I T L E A M E N D M E N T ==========
210 And the title is amended as follows:
211 Delete everything before the enacting clause
212 and insert:
213 A bill to be entitled

491882

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