

By Senator Broxson

1-01010C-20

20201828\_\_

1                   A bill to be entitled  
2           An act relating to litigation financing consumer  
3           protection; creating the Litigation Financing Consumer  
4           Protection Act; creating s. 559.952, F.S.; defining  
5           terms; creating s. 559.953, F.S.; requiring litigation  
6           financiers to register with the Office of Financial  
7           Regulation; providing registration requirements;  
8           creating s. 559.954, F.S.; providing mandatory  
9           litigation financing contract terms; creating s.  
10          559.955, F.S.; prohibiting litigation financiers from  
11          engaging in specified conduct; creating s. 559.956,  
12          F.S.; providing for mandatory litigation financing  
13          contract disclosures; creating s. 559.957, F.S.;  
14          providing for a contingent right to civil action  
15          proceeds assignability; establishing the priority of  
16          liens against or rights to civil action or claim  
17          proceeds; creating s. 559.958, F.S.; authorizing  
18          litigation financiers to charge interest up to a  
19          specified amount annually; providing for simple  
20          compounding; providing for a maximum annual, monthly,  
21          and daily percentage rate; providing a maximum  
22          interest accrual period; providing that total interest  
23          must be calculated based on the actual number of days  
24          for which interest accrued; capping the fees and  
25          charges that litigation financiers may assess;  
26          prohibiting a litigation financier from assessing  
27          specified fees or charges; creating s. 559.959, F.S.;  
28          requiring litigation financing contract disclosure  
29          under specified circumstances; creating s. 559.961,

1-01010C-20

20201828\_\_

30 F.S.; providing that specified communications between  
31 attorneys and litigation financiers do not limit or  
32 waive statutory or common-law privilege; creating s.  
33 559.962, F.S.; providing that a violation of this part  
34 is a violation of the Florida Deceptive and Unfair  
35 Trade Practices Act; providing that this act does not  
36 limit the powers, duties, and rights of specified  
37 persons created under other law; providing an  
38 effective date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Part XIII of chapter 559, Florida Statutes,  
43 consisting of sections 559.952, 559.953, 559.954, 559.955,  
44 559.956, 559.957, 559.958, 559.959, 559.961, and 559.962, is  
45 created and may be cited as the "Litigation Financing Consumer  
46 Protection Act."

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

49 559.952 Definitions.—As used in this part, the term:

50 (1) "Consumer" means any natural person residing,  
51 physically present, or domiciled in this state.

52 (2) "Enforcing authority" has the same meaning as in s.  
53 501.203.

54 (3) "Funded amount" means the funds actually received and  
55 retained by a consumer under a litigation financing contract.

56 (4) "Health care practitioner" has the same meaning as in  
57 s. 456.001.

58 (5) "Interest" means the cost of obtaining litigation

1-01010C-20

20201828\_\_

59 financing and includes any profit or advantage of any kind  
60 whatsoever that a litigation financier may charge, contract for,  
61 collect, receive, or in any way obtain as a condition of a  
62 litigation financing contract. Charges and fees specifically  
63 authorized by this part may not be deemed interest.

64 (6) "Litigation financier" means a person, an entity, or a  
65 partnership engaged in the business of litigation financing.

66 (7) "Litigation financing" means a nonrecourse transaction  
67 in which a litigation financier provides funds to a consumer in  
68 exchange for an assignment of the consumer's contingent right to  
69 receive an amount of the potential proceeds of his or her civil  
70 action or claim. The term does not include any of the following:

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

75 (b) A commercial tort claim as defined in s.  
76 679.1021(1)(m).

77 (c) A claim under the Workers' Compensation Law.

78 (d) Normal business lending or financing arrangements  
79 between an attorney or a law firm and a lending institution to  
80 fund litigation costs.

81 (e) A consumer finance loan, as defined in s. 516.01.

82 (8) "Net proceeds" means the portion of the proceeds of a  
83 civil action or claim remaining after satisfaction of all liens  
84 with a higher priority than that of the litigation financier as  
85 specified in s. 559.956(2).

86 (9) "Office" means the Office of Financial Regulation.

87 Section 3. Section 559.953, Florida Statutes, is created to

1-01010C-20

20201828\_\_

88 read:

89 559.953 Litigation financier registration; registration  
90 revocation.—91 (1) A litigation financier may not engage in litigation  
92 financing in this state before registering as a litigation  
93 financier under this section.94 (a) A litigation financier that is a corporation, limited  
95 liability company, or partnership is registered under this  
96 section if it has:97 1. Met the bond requirements of subsection (2);  
98 2. A status of active and in good standing as reflected in  
99 the office's records; and100 3. Filed articles of organization or incorporation, a  
101 certificate of limited partnership, or another organizational  
102 document, or, if a foreign entity, an application for a  
103 certificate of authority with the office stating therein that it  
104 is a litigation financier.105 (b) A litigation financier that is not a corporation,  
106 limited liability company, or partnership is registered under  
107 this section if it has:108 1. Met the bond requirements of subsection (2); and  
109 2. Filed a litigation financier registration application  
110 with the office on a form prescribed by the office which  
111 contains, at a minimum:112 a. The applicant's full legal name and any fictitious name  
113 used by the applicant;114 b. The applicant's physical address, mailing address, and  
115 telephone number;116 c. A statement that the applicant is a litigation

1-01010C-20

20201828\_\_

117 financier; and

118 d. Any other information the office deems necessary.

119 (2) Each litigation financier must file with the office a  
120 \$250,000 surety bond, which must meet all of the following  
121 requirements:

122 (a) Be issued by a surety company authorized to do business  
123 in this state.

124 (b) Be payable to the office for the payment of damages  
125 awarded to a consumer under part II of this chapter.

126 (c) Be effective so long as the office's records designate  
127 a litigation financier as such or a litigation financing  
128 contract with the litigation financier is effective.

129 (3) A litigation financier must amend its registration  
130 within 30 days after the information contained therein changes  
131 or becomes inaccurate in any respect. A litigation financier  
132 that is not a corporation, limited liability company, or  
133 partnership may amend its registration by filing with the office  
134 an amendment on a form prescribed by the commission.

135 (4) If the office determines that a litigation financier  
136 has not complied with the requirements of this section, the  
137 office must serve the litigation financier notice in a record of  
138 its intent to revoke the litigation financier's registration.

139 Such notice:

140 (a) Must specifically state all grounds for revocation.

141 (b) May be sent by electronic mail to a litigation  
142 financier that provided the office with an electronic mail  
143 address.

144 (5) A litigation financier has 60 days from the date the  
145 office sends the notice required by subsection (4) to correct

1-01010C-20

20201828\_\_

146 each ground for revocation or demonstrate to the reasonable  
147 satisfaction of the office that each ground determined by the  
148 office does not exist. The office must revoke the litigation  
149 financier registration of any litigation financier who fails to  
150 comply with the requirements of this subsection.

151 (6) The office has the authority reasonably necessary to  
152 enable it to administer this section efficiently, to perform  
153 duties imposed upon it, and to adopt rules to implement this  
154 section.

155 Section 4. Section 559.954, Florida Statutes, is created to  
156 read:

157 559.954 Litigation financing contracts; terms.—The  
158 litigation financing terms must be set forth in a written  
159 contract containing all of the following:

160 (1) A right of rescission allowing the consumer to cancel  
161 the contract without penalty, interest, charges, fees, or  
162 further obligation if, within 5 business days after contract  
163 execution or funds receipt by the consumer, whichever is later,  
164 the consumer provides written rescission notice and returns any  
165 funds already provided under the contract to the litigation  
166 financier.

167 (2) The consumer's written acknowledgement of whether an  
168 attorney represents him or her in the civil action or claim that  
169 is the subject of the contract.

170 (3) A statement indicating that, in the event the proceeds  
171 of the subject civil action or claim are paid into a settlement  
172 fund or trust, the litigation financier must notify the fund or  
173 trust administrator of any outstanding financial obligations  
174 arising from the contract.

1-01010C-20

20201828\_\_

175 Section 5. Section 559.955, Florida Statutes, is created to  
176 read:

177 559.955 Prohibited conduct.—A litigation financier may not  
178 do any of the following:

179 (1) Pay or offer to pay a commission, a referral fee, or  
180 other consideration to any person or entity, including an  
181 attorney, a law firm, or a health care practitioner, for  
182 referring a consumer to a litigation financier.

183 (2) Accept a commission, a referral fee, a rebate, or other  
184 consideration from any person or entity, including an attorney,  
185 a law firm, or a health care practitioner.

186 (3) Advertise false or misleading information about its  
187 products or services.

188 (4) Refer a consumer to a specific attorney, law firm, or  
189 health care practitioner, except that, if a consumer lacks legal  
190 representation, the litigation financier may refer the consumer  
191 to an attorney referral service operated by a county or state  
192 bar association.

193 (5) Fail to promptly supply a copy of all complete  
194 litigation financing contracts to the consumer.

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

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

201 (8) Offer or provide legal advice to the consumer regarding  
202 the litigation financing contract or the subject civil action or  
203 claim.

1-01010C-20

20201828\_\_

204       (9) Assign a litigation financing contract in whole or in  
205 part.

206       (10) Report to a consumer credit reporting agency if  
207 insufficient funds remain from the net proceeds of the subject  
208 civil action or claim to repay the litigation financier.

209       (11) Direct, or make any decisions with respect to, the  
210 conduct of the subject civil action or claim or any settlement  
211 thereof.

212       (12) Enter into a litigation financing contract with a  
213 consumer incorporating the consumer's obligations to the  
214 litigation financier under an existing litigation financing  
215 contract.

216       (13) Knowingly enter into a litigation financing contract  
217 with a consumer already under a litigation financing contract  
218 with another litigation financier without first paying the  
219 entire funded amount and all charges owed under the existing  
220 contract, unless the consumer consents to a contemporaneous  
221 financing arrangement in writing.

222       Section 6. Section 559.956, Florida Statutes, is created to  
223 read:

224       559.956 Required disclosures.—

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

228       (a) Notice of the consumer's right to a completely filled  
229 in contract.

230       (b) A statement that the litigation financier has no right  
231 to and will not make any decisions or attempt to influence the  
232 consumer or his or her attorney about the conduct of the civil



1-01010C-20

20201828\_\_

233 action or claim subject to the contract and that the right to  
234 make such decisions remains solely with the consumer.

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

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

238 (e) The annual percentage rate of return.

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

241 (g) A statement that the consumer will owe no charges or  
242 fees other than those described in the disclosures.

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

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

249 (j) Notice that if the net proceeds of the subject civil  
250 action or claim are insufficient to fully repay the litigation  
251 financier, the litigation financier will accept a reduced sum as  
252 full payment of the funded amount and all fees and charges owed,  
253 which sum may not exceed the net proceeds less proceeds  
254 specifically awarded for future medical expenses.

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

258  
259 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS  
260 CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER  
261 OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT

1-01010C-20

20201828\_\_

262 EXECUTION OR RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION  
263 FINANCIER], WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE  
264 CANCELLATION AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE  
265 LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE  
266 POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE  
267 DATE OF THE RETURN RECEIPT REQUESTED IF MAILED BY CERTIFIED  
268 MAIL, WILL BE CONSIDERED THE DATE OF RETURN OF THE FUNDS.

269

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

273

274 DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR  
275 IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS.  
276 BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY.  
277 YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL  
278 PROFESSIONAL, OR AN ACCOUNTANT.

279

280 Section 7. Section 559.957, Florida Statutes, is created to  
281 read:

282 559.957 Contingent right to proceeds assignable; priority  
283 of lien or right to proceeds.—

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

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

1-01010C-20

20201828\_\_

291 (a) Attorney, insurance carrier, or health care  
292 practitioner liens or liens based upon subrogation interests or  
293 reimbursement rights related to the subject civil action or  
294 claim.

295 (b) Child support, Medicare, tax, or any other statutory or  
296 governmental lien.

297 Section 8. Section 559.958, Florida Statutes, is created to  
298 read:

299 559.958 Interest, fees, charges, and penalties.-

300 (1) A litigation financier may not directly or indirectly  
301 charge, contract for, or receive an interest rate of greater  
302 than 30 percent of the funded amount per annum. In determining  
303 compliance with the statutory maximum interest rate, the  
304 computations used must be simple interest and not add-on  
305 interest or any other computation.

306 (2) The maximum annual percentage rate of finance charge  
307 which may be contracted for and received by a litigation  
308 financier is 12 times the maximum monthly rate, and the maximum  
309 monthly rate must be computed on the basis of one-twelfth of the  
310 annual rate for each full month. The maximum daily rate must be  
311 computed on the basis of the maximum monthly rate divided by the  
312 number of days in the month.

313 (3) Interest may only accrue until a court enters a final  
314 order or a settlement agreement is executed in the civil action  
315 or claim subject to the litigation financing contract, whichever  
316 is earlier, but in no case may interest accrue for a period  
317 exceeding 3 years from the date the consumer receives the funds  
318 from the litigation financier. The total interest amount  
319 assessed must be calculated based on the actual number of days

1-01010C-20

20201828\_\_

320 for which interest accrued.

321 (4) A litigation financier may not directly or indirectly  
322 charge, contract for, or receive any charges or fees the  
323 combined total of which exceeds \$500 with regard to a single  
324 civil action or claim, regardless of the number of litigation  
325 financing contracts the consumer enters into with the litigation  
326 financier respecting the civil action or claim.

327 (5) A litigation financier may not directly or indirectly  
328 charge, contract for, or receive any interest, charges, or fees  
329 for rescission or cancellation of a litigation financing  
330 contract under s. 559.954(1).

331 Section 9. Section 559.959, Florida Statutes, is created to  
332 read:

333 559.959 Litigation financing contracts; discovery.—Except  
334 as otherwise ordered by the court, a party to any civil action  
335 or claim, without awaiting a discovery request, shall provide to  
336 the other parties any contract under which a litigation  
337 financier has a contingent right to receive compensation sourced  
338 from potential proceeds of the civil action or claim.

339 Section 10. Section 559.961, Florida Statutes, is created  
340 to read:

341 559.961 Effect of communication on privilege.—  
342 Communications between a consumer's attorney and a litigation  
343 financier as it pertains to a litigation financing contract do  
344 not limit, waive, or abrogate the scope or nature of any  
345 statutory or common-law privilege, including the work-product  
346 doctrine and the attorney-client privilege.

347 Section 11. Section 559.962, Florida Statutes, is created  
348 to read:

1-01010C-20

20201828\_\_

349       559.962 Violation; enforcement.-

350       (1) A violation of this part is an unfair or deceptive  
351 trade act or practice under part II of chapter 501.

352       (2) This section may not be construed to limit:

353       (a) The enforcing authority's exercise of powers or  
354 performance of duties that the enforcing authority is otherwise  
355 legally authorized or required to exercise or perform.

356       (b) The rights and remedies available to the state or a  
357 person under any other law.

358       Section 12. This act shall take effect July 1, 2020.