

1 A bill to be entitled
2 An act relating to litigation financing consumer
3 protection; creating part VIII of ch. 501, F.S.,
4 entitled "Litigation Financing Consumer Protection
5 Act"; creating s. 501.1001, F.S.; providing
6 definitions; creating s. 501.1002, F.S.; requiring
7 litigation financiers to register with the Department
8 of State before engaging in litigation financing;
9 providing registration requirements; requiring
10 litigation financiers to file a surety bond meeting
11 specified requirements; requiring the department serve
12 notice to such financiers and to revoke such
13 registrations for certain noncompliance; authorizing
14 the department to adopt rules; creating s. 501.1003,
15 F.S.; providing requirements for litigation financing
16 contracts; creating s. 501.1004, F.S.; prohibiting
17 litigation financiers from engaging in specified
18 conduct; creating s. 501.1005, F.S.; providing
19 disclosure requirements for litigation financing
20 contracts; creating s. 501.1006, F.S.; providing for
21 the assignment of contingent rights to civil action or
22 claim proceeds; specifying the priority of liens
23 against or rights to civil action or claim proceeds;
24 creating s. 501.1007, F.S.; authorizing litigation
25 financiers to assess specified interest, fees, and

26 | charges; providing requirements for such interest,
 27 | fees, and charges; prohibiting a litigation financier
 28 | from assessing specified fees or charges; creating s.
 29 | 501.1008, F.S.; requiring the disclosure of litigation
 30 | financing contracts under specified circumstances;
 31 | creating s. 501.1009, F.S.; providing that specified
 32 | communications between attorneys and litigation
 33 | financiers do not effect statutory or common-law
 34 | privilege; creating s. 501.1011, F.S.; providing that
 35 | violations of the act are deceptive and unfair trade
 36 | practices; providing construction; providing an
 37 | effective date.

38 |

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

40 |

41 | Section 1. Part VIII of chapter 501, Florida Statutes,
 42 | consisting of sections 501.1001, 501.1002, 501.1003, 501.1004,
 43 | 501.1005, 501.1006, 501.1007, 501.1008, 501.1009, and 501.1011,
 44 | is created and entitled "Litigation Financing Consumer
 45 | Protection Act."

46 | Section 2. Section 501.1001, Florida Statutes, is created
 47 | to read:

48 | 501.1001 Definitions.—As used in this part, the term:

49 | (1) "Consumer" means any individual.

50 | (2) "Department" means the Department of State.

51 (3) "Enforcing authority" has the same meaning as in s.
52 501.203.

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

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

57 (6) "Interest" means the cost of obtaining litigation
58 financing and includes any profit or advantage of any kind
59 whatsoever that a litigation financier may charge, contract for,
60 collect, receive, or in any way obtain as a condition for a
61 litigation financing contract. Charges and fees specifically
62 authorized by this part are not interest.

63 (7) "Litigation financier" means a person engaged in the
64 business of litigation financing.

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

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

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

76 (c) A worker's compensation claim under chapter 440;

77 (d) Lending or financing arrangements between an attorney
 78 or law firm and a lending institution to fund litigation costs
 79 in the ordinary course of business; or

80 (e) A consumer finance loan, as defined in s. 516.01(2).

81 (9) "Net proceeds" means the portion of the proceeds of a
 82 civil action or claim remaining after satisfaction of all liens
 83 with a higher priority than that of the litigation financier as
 84 specified in s. 501.1006(2).

85 Section 3. Section 501.1002, Florida Statutes, is created
 86 to read:

87 501.1002 Litigation financier registration; registration
 88 revocation.—

89 (1) A litigation financier may not engage in litigation
 90 financing in this state before registering as a litigation
 91 financier under this section.

92 (a) A litigation financier that is a corporation, limited
 93 liability company, or partnership is registered under this
 94 section if it has:

95 1. Met the bond requirements of subsection (2);

96 2. A status of active and in good standing as reflected in
 97 department records; and

98 3. Filed articles of organization or incorporation, a
 99 certificate of limited partnership, or another organizational
 100 document, or, if a foreign entity, an application for a

101 certificate of authority with the department stating therein
102 that it is a litigation financier.

103 (b) A litigation financier who is not a corporation,
104 limited liability company, or partnership is registered under
105 this section if he or she has:

106 1. Met the bond requirements of subsection (2); and
107 2. Filed a litigation financier registration application
108 with the department on a form prescribed by the department
109 containing, at a minimum:

110 a. The applicant's full legal name and fictitious name, if
111 any;

112 b. The applicant's physical address, mailing address, and
113 telephone number;

114 c. A statement that the applicant is a litigation
115 financier; and

116 d. Any other information the department deems necessary.

117 (2) Each litigation financier must file with the
118 department a \$250,000 surety bond, which bond must be:

119 (a) Issued by a surety company authorized to do business
120 in this state.

121 (b) Payable to the department for the payment of damages
122 awarded to a consumer under part II of this chapter.

123 (c) Effective so long as the department's records
124 designate a litigation financier as such or a litigation
125 financing contract with the litigation financier is effective.

126 (3) A litigation financier must amend its registration
127 within 30 days after the date the information contained therein
128 changes or becomes inaccurate in any respect. A litigation
129 financier who is not a corporation, limited liability company,
130 or partnership may amend his or her registration by filing with
131 the department an amendment on a form prescribed by the
132 department.

133 (4) If the department determines that a litigation
134 financier has not complied with the requirements of this
135 section, the department shall serve the litigation financier
136 notice in a record of its intent to revoke the litigation
137 financier's registration. Such notice:

138 (a) Must specifically state all grounds for revocation;
139 and

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

143 (5) A litigation financier has 60 days from the date the
144 department sends the notice required by subsection (4) to
145 correct the grounds for revocation or demonstrate to the
146 reasonable satisfaction of the department that each ground
147 determined by the department does not exist. The department
148 shall revoke the litigation financier registration of any
149 litigation financier who fails to comply with the requirements
150 of this section.

151 (6) The department has the authority reasonably necessary
152 to 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 501.1003, Florida Statutes, is created
156 to read:

157 501.1003 Litigation financing contracts; terms.—The
158 litigation financing terms must be set forth in a written
159 contract containing:

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

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.

175 Section 5. Section 501.1004, Florida Statutes, is created

176 to read:

177 501.1004 Prohibited conduct.—A litigation financier may
178 not:

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

183 (2) Accept a commission, referral fee, rebate, or other
184 consideration from any person, including an attorney, law firm,
185 or 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 any complete
194 litigation financing contract 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, that the consumer might otherwise have in the subject
198 civil action or claim;

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

201 claim;
 202 (8) Offer or provide legal advice to the consumer
 203 regarding the litigation financing contract or the subject civil
 204 action or claim;
 205 (9) Assign a litigation financing contract in whole or in
 206 part;
 207 (10) Report to a consumer credit reporting agency if
 208 insufficient funds remain from the net proceeds of the subject
 209 civil action or claim to repay the litigation financier;
 210 (11) Direct, or make any decisions with respect to, the
 211 course of the subject civil action or claim or any settlement
 212 thereof;
 213 (12) Enter into a litigation financing contract with a
 214 consumer incorporating the consumer's obligations to the
 215 litigation financier under an existing litigation financing
 216 contract; or
 217 (13) Knowingly enter into a litigation financing contract
 218 with a consumer already under a litigation financing contract
 219 with another litigation financier without first paying the
 220 entire funded amount and all fees and charges owed under the
 221 existing contract, unless the consumer consents to a
 222 contemporaneous financing arrangement in writing.
 223 Section 6. Section 501.1005, Florida Statutes, is created
 224 to read:
 225 501.1005 Required disclosures.—

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

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

231 (b) A statement that the litigation financier does not
232 have the right to, and may not make any decisions or attempt to,
233 influence the consumer or his or her attorney about the conduct
234 of the civil action or claim that is the subject of the contract
235 and that the right to make such decisions remains solely with
236 the consumer;

237 (c) The total funded amount provided to the consumer;

238 (d) An itemized list of all fees and charges payable by
239 the consumer;

240 (e) The interest rate;

241 (f) The total amount due from the consumer in 6-month
242 intervals for 3 years, including all interest, fees, and
243 charges;

244 (g) A statement that the consumer will owe no fees or
245 charges other than those described in the disclosures;

246 (h) The cumulative amount due from the consumer for all
247 litigation financing contracts if the consumer seeks multiple
248 contracts and makes repayment any time after contract execution;

249 (i) Notice that if the consumer recovers nothing from the
250 subject civil action or claim, he or she will owe the litigation

251 financier nothing; and

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

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

261
262 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT
263 WITHOUT PENALTY, INTEREST, FEES, CHARGES, OR FURTHER OBLIGATION
264 WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR
265 RECEIPT OF FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER],
266 WHICHEVER IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION
267 AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE LITIGATION
268 FINANCIER]. FOR PURPOSES OF THE DEADLINE, THE POSTMARK DATE ON
269 FUNDS RETURNED BY REGULAR U.S. MAIL, OR THE DATE OF THE RETURN
270 RECEIPT REQUESTED IF MAILED BY CERTIFIED MAIL, WILL BE
271 CONSIDERED THE DATE OF RETURN OF THE FUNDS.

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

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

282 Section 7. Section 501.1006, Florida Statutes, is created
283 to read:

284 501.1006 Contingent right to proceeds assignable; priority
285 of lien or right to proceeds.—

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

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

293 (a) Attorney, insurance carrier, or healthcare
294 practitioner liens or liens based upon subrogation interests or
295 reimbursement rights related to the subject civil action or
296 claim; and

297 (b) Child support, Medicare, tax, or any other statutory
298 or governmental lien.

299 Section 8. Section 501.1007, Florida Statutes, is created
300 to read:

301 501.1007 Interest, fees, charges, and penalties.—
 302 (1) A litigation financier may not directly or indirectly
 303 charge, contract for, or receive an interest rate of greater
 304 than 30 percent of the funded amount per annum. In determining
 305 compliance with the statutory maximum interest rate, the
 306 computations used must be simple interest and not add-on
 307 interest or any other computations.
 308 (2) The maximum interest rate that may be contracted for
 309 and received by a litigation financier is 12 times the maximum
 310 monthly rate, and the maximum monthly rate must be computed on
 311 the basis of one-twelfth of the annual rate for each full month.
 312 The maximum daily rate must be computed on the basis of the
 313 maximum monthly rate divided by the number of days in the month.
 314 (3) Interest may only accrue until a court enters a final
 315 order or a settlement agreement is executed in the civil action
 316 or claim that is the subject of the litigation financing
 317 contract, whichever is earlier, but interest may not accrue for
 318 a period exceeding three years from the date the consumer
 319 receives the funds from the litigation financier. The total
 320 interest assessed must be calculated based on the actual number
 321 of days for which interest accrued.
 322 (4) A litigation financier may not directly or indirectly
 323 charge, contract for, or receive any fees or charges the
 324 combined total of which exceeds \$500 with regard to a single
 325 civil action or claim, regardless of the number of litigation

326 financing contracts the consumer enters into with the litigation
 327 financier with respect to the civil action or claim.

328 (5) A litigation financier may not directly or indirectly
 329 charge, contract for, or receive any interest, fees, or charges,
 330 for rescission or cancellation of a litigation financing
 331 contract under s. 501.1003(1).

332 Section 9. Section 501.1008, Florida Statutes, is created
 333 to read:

334 501.1008 Litigation financing contracts; discovery.—Except
 335 as otherwise ordered by the court, a party to any civil action
 336 or claim must, without awaiting a discovery request, provide to
 337 the other parties any contract under which a litigation
 338 financier has a contingent right to receive compensation sourced
 339 from potential proceeds of the civil action or claim.

340 Section 10. Section 501.1009, Florida Statutes, is created
 341 to read:

342 501.1009 Effect of communication on privilege.—
 343 Communication between a consumer's attorney and a litigation
 344 financier regarding a litigation financing contract does not
 345 limit, waive, or abrogate the scope or nature of any statutory
 346 or common-law privilege, including the work-product doctrine and
 347 the attorney-client privilege.

348 Section 11. Section 501.1011, Florida Statutes, is created
 349 to read:

350 501.1011 Violation; enforcement.—

351 (1) A violation of this part is an unfair and deceptive
 352 trade practice actionable under part II of this chapter.
 353 (2) This section does not limit the:
 354 (a) Enforcing authority's exercise of powers or
 355 performance of duties which the enforcing authority is otherwise
 356 legally authorized or required to exercise or perform; or
 357 (b) Rights and remedies available to the state or a person
 358 under any other law.
 359 Section 12. This act shall take effect July 1, 2020.