

1 A bill to be entitled
2 An act relating to litigation financing consumer
3 protection; creating part XIII of ch. 559, F.S.,
4 entitled "Litigation Financing Consumer Protection
5 Act"; creating s. 559.952, F.S.; providing
6 definitions; creating s. 559.953, 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. 559.954,
15 F.S.; providing requirements for litigation financing
16 contracts; creating s. 559.955, F.S.; prohibiting
17 litigation financiers from engaging in specified
18 conduct; creating s. 559.956, F.S.; providing
19 disclosure requirements for litigation financing
20 contracts; creating s. 559.957, 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. 559.958, 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 | 559.959, F.S.; requiring the disclosure of litigation
 30 | financing contracts under specified circumstances;
 31 | creating s. 559.961, F.S.; providing that specified
 32 | communications between attorneys and litigation
 33 | financiers do not affect statutory or common-law
 34 | privilege; creating s. 559.962, 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 XIII of chapter 559, Florida Statutes,
 42 | consisting of sections 559.952, 559.953, 559.954, 559.955,
 43 | 559.956, 559.957, 559.958, 559.959, 559.961, and 559.962, is
 44 | created and entitled "Litigation Financing Consumer Protection
 45 | Act."

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

48 | 559.952 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 to a consumer a funded
67 amount of \$500,000 or less in exchange for an assignment of the
68 consumer's contingent right to receive an amount of the
69 potential proceeds of the consumer's civil action or claim. The
70 term does not include:

71 (a) Legal services provided to a consumer on a contingency
72 fee basis, or advanced legal costs, where 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 worker's compensation claim under chapter 440;

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

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

82 | (9) "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. 559.957(2).

86 | Section 3. Section 559.953, Florida Statutes, is created
 87 | to read:

88 | 559.953 Litigation financier registration; registration
 89 | revocation.—

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

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

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

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

99 | 3. Filed articles of organization or incorporation, a
 100 | certificate of limited partnership, or another organizational

101 document, or, if a foreign entity, an application for a
102 certificate of authority with the department stating therein
103 that it is a litigation financier.

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

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

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

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

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

117 d. Any other information the department deems necessary.

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

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

122 (b) Payable to the department for the payment of damages
123 awarded to a consumer under part II of chapter 501.

124 (c) Effective so long as the department's records
125 designate a litigation financier as such or a litigation

126 financing contract with the litigation financier is effective.

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

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

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

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

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

151 of this section.

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

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

158 559.954 Litigation financing contracts; terms.—The
159 litigation financing terms must be set forth in a written
160 contract containing:

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

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

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

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

178 559.955 Prohibited conduct.—A litigation financier may
179 not:

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

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

187 (3) Advertise false or misleading information about its
188 products or services;

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

194 (5) Fail to promptly supply a copy of any complete
195 litigation financing contract to the consumer;

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

200 (7) Attempt to effect arbitration or waiver of a

201 consumer's right to a jury trial in the subject civil action or
202 claim;

203 (8) Offer or provide legal advice to the consumer
204 regarding the litigation financing contract or the subject civil
205 action or claim;

206 (9) Assign a litigation financing contract in whole or in
207 part;

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

211 (11) Direct, or make any decisions with respect to, the
212 course of the subject civil action or claim or any settlement
213 thereof;

214 (12) Enter into a litigation financing contract with a
215 consumer incorporating the consumer's obligations to the
216 litigation financier under an existing litigation financing
217 contract; or

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

224 Section 6. Section 559.956, Florida Statutes, is created
225 to read:

226 559.956 Required disclosures.—

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

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

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

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

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

241 (e) The interest rate;

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

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

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

250 (i) Notice that if the consumer recovers nothing from the

251 subject civil action or claim, he or she will owe the litigation
252 financier nothing; and

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

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

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

273
274 (3) A litigation financing contract must contain the
275 following disclosure immediately above the consumer's signature

276 line in 18-point uppercase and boldfaced type:

277

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

283 Section 7. Section 559.957, Florida Statutes, is created
284 to read:

285 559.957 Contingent right to proceeds assignable; priority
286 of lien or right to proceeds.—

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

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

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

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

300 Section 8. Section 559.958, Florida Statutes, is created

301 to read:

302 559.958 Interest, fees, charges, and penalties.—

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

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

315 (3) Interest may only accrue until a court enters a final
316 order or a settlement agreement is executed in the civil action
317 or claim that is the subject of the litigation financing
318 contract, whichever is earlier, but interest may not accrue for
319 a period exceeding three years from the date the consumer
320 receives the funds from the litigation financier. The total
321 interest assessed must be calculated based on the actual number
322 of days for which interest accrued.

323 (4) A litigation financier may not directly or indirectly
324 charge, contract for, or receive any fees or charges the
325 combined total of which exceeds \$500 with regard to a single

326 civil action or claim, regardless of the number of litigation
327 financing contracts the consumer enters into with the litigation
328 financier with respect to the civil action or claim.

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

333 Section 9. Section 559.959, Florida Statutes, is created
334 to read:

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

341 Section 10. Section 559.961, Florida Statutes, is created
342 to read:

343 559.961 Effect of communication on privilege.—
344 Communication between a consumer's attorney and a litigation
345 financier regarding a litigation financing contract does not
346 limit, waive, or abrogate the scope or nature of any statutory
347 or common-law privilege, including the work-product doctrine and
348 the attorney-client privilege.

349 Section 11. Section 559.962, Florida Statutes, is created
350 to read:

351 559.962 Violation; enforcement.-
 352 (1) A violation of this part is an unfair and deceptive
 353 trade practice actionable under part II of chapter 501.
 354 (2) This section does not limit the:
 355 (a) Enforcing authority's exercise of powers or
 356 performance of duties which the enforcing authority is otherwise
 357 legally authorized or required to exercise or perform; or
 358 (b) Rights and remedies available to the state or a person
 359 under any other law.
 360 Section 12. This act shall take effect July 1, 2020.