

By Senator Broxson

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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. 559.953, F.S.; defining terms;
6 creating s. 559.954, F.S.; requiring litigation
7 financiers to register with the Department of State
8 before engaging in litigation financing; providing
9 registration requirements; requiring litigation
10 financiers to file a surety bond meeting specified
11 requirements; requiring the department serve notice to
12 such financiers and to revoke such registrations for
13 certain noncompliance; authorizing the department to
14 adopt rules; creating s. 559.955, F.S.; providing
15 requirements for litigation financing contracts;
16 creating s. 559.956, F.S.; prohibiting litigation
17 financiers from engaging in specified conduct;
18 creating s. 559.957, F.S.; providing disclosure
19 requirements for litigation financing contracts;
20 creating s. 559.958, F.S.; providing for the
21 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. 559.959, 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 certain fees or charges; creating s.
29 559.961, F.S.; requiring the disclosure of litigation

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30 financing contracts under specified circumstances;
31 creating s. 559.962, F.S.; providing that specified
32 communications between attorneys and litigation
33 financiers do not affect statutory or common-law
34 privilege; creating s. 559.963, F.S.; providing that
35 violations of the act constitute deceptive and unfair
36 trade 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 559.953, 559.954, 559.955, 559.956,
43 559.957, 559.958, 559.959, 559.961, 559.962, and 559.963, is
44 created and entitled "Litigation Financing Consumer Protection
45 Act."

46 Section 2. Section 559.953, Florida Statutes, is created to
47 read:

48 559.953 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(2).

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.

57 (6) "Interest" means the cost of obtaining litigation
58 financing and includes any profit or advantage of any kind

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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. 559.958(2).

85 Section 3. Section 559.954, Florida Statutes, is created to
86 read:

87 559.954 Litigation financier registration; registration

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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 shall be considered registered
94 under this 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 shall be considered
105 registered under 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.

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

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

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

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

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

142 (5) A litigation financier has 60 days from the date the
143 department sends the notice required by subsection (4) to
144 correct the grounds for revocation or demonstrate to the
145 reasonable satisfaction of the department that each ground

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146 determined by the department does not exist. The department
147 shall revoke the registration of any litigation financier that
148 fails to comply with the requirements of this section.

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

153 Section 4. Section 559.955, Florida Statutes, is created to
154 read:

155 559.955 Litigation financing contracts; terms.—The
156 litigation financing terms must be set forth in a written
157 contract containing:

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

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

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

173 Section 5. Section 559.956, Florida Statutes, is created to
174 read:

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175 559.956 Prohibited conduct.—A litigation financier may not:

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

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

183 (3) Advertise false or misleading information about its
184 products or services;

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

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

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

196 (7) Attempt to effect arbitration or waiver of a consumer's
197 right to a jury trial in the subject civil action or claim;

198 (8) Offer or provide legal advice to the consumer regarding
199 the litigation financing contract or the subject civil action or
200 claim;

201 (9) Assign a litigation financing contract in whole or in
202 part;

203 (10) Report to a consumer credit reporting agency if

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204 insufficient funds remain from the net proceeds of the subject
205 civil action or claim to repay the litigation financier;

206 (11) Direct or make any decisions with respect to the
207 course of the subject civil action or claim or any settlement
208 thereof;

209 (12) Enter into a litigation financing contract with a
210 consumer incorporating the consumer's obligations to the
211 litigation financier under an existing litigation financing
212 contract; or

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

219 Section 6. Section 559.957, Florida Statutes, is created to
220 read:

221 559.957 Required disclosures.—

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

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

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

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- 233 (c) The total funded amount provided to the consumer;
234 (d) An itemized list of all fees and charges payable by the
235 consumer;
236 (e) The interest rate;
237 (f) The total amount due from the consumer in 6-month
238 intervals for 3 years, including all interest, fees, and
239 charges;
240 (g) A statement that the consumer will owe no fees or
241 charges other than those described in the disclosures;
242 (h) The cumulative amount due from the consumer for all
243 litigation financing contracts if the consumer seeks multiple
244 contracts and makes repayment any time after contract execution;
245 (i) Notice that if the consumer recovers nothing from the
246 subject civil action or claim, he or she will owe the litigation
247 financier nothing; and
248 (j) Notice that if the net proceeds of the subject civil
249 action or claim are insufficient to fully repay the litigation
250 financier, the litigation financier will accept a reduced sum as
251 full payment of the funded amount and all fees and charges owed,
252 which sum may not exceed the net proceeds less proceeds
253 specifically awarded for future medical expenses.
254 (2) A litigation financing contract must also contain the
255 following disclosure on the front page of the contract in at
256 least 18-point uppercase and boldfaced type:
257
258 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT
259 WITHOUT PENALTY, INTEREST, FEES, CHARGES, OR FURTHER OBLIGATION
260 WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR
261 RECEIPT OF FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER],

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

268

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

272

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

278 Section 7. Section 559.958, Florida Statutes, is created to
279 read:

280 559.958 Contingent right to proceeds assignable; priority
281 of lien or right to proceeds.-

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

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

289 (a) Attorney, insurance carrier, or healthcare practitioner
290 liens or liens based upon subrogation interests or reimbursement

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291 rights related to the subject civil action or claim; and

292 (b) Child support, Medicare, tax, or any other statutory or
293 governmental lien.

294 Section 8. Section 559.959, Florida Statutes, is created to
295 read:

296 559.959 Interest, fees, charges, and penalties.—

297 (1) A litigation financier may not directly or indirectly
298 charge, contract for, or receive an interest rate of greater
299 than 10 percent of the funded amount per annum. In determining
300 compliance with the statutory maximum interest rate, the
301 computations used must be simple interest and not add-on
302 interest or any other computations.

303 (2) The maximum interest rate that may be contracted for
304 and received by a litigation financier is 12 times the maximum
305 monthly rate, and the maximum monthly rate must be computed on
306 the basis of one-twelfth of the annual rate for each full month.
307 The maximum daily rate must be computed on the basis of the
308 maximum monthly rate divided by the number of days in the month.

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

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

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320 civil action or claim, regardless of the number of litigation
321 financing contracts the consumer enters into with the litigation
322 financier with respect to the civil action or claim.

323 (5) A litigation financier may not directly or indirectly
324 charge, contract for, or receive any interest, fees, or charges,
325 for rescission or cancellation of a litigation financing
326 contract under s. 559.955(1).

327 Section 9. Section 559.961, Florida Statutes, is created to
328 read:

329 559.961 Litigation financing contracts; discovery.—Except
330 as otherwise ordered by the court, a party to any civil action
331 or claim must, without awaiting a discovery request, provide to
332 the other parties any contract under which a litigation
333 financier has a contingent right to receive compensation sourced
334 from potential proceeds of the civil action or claim.

335 Section 10. Section 559.962, Florida Statutes, is created
336 to read:

337 559.962 Effect of communication on privilege.—Communication
338 between a consumer's attorney and a litigation financier
339 regarding a litigation financing contract does not limit, waive,
340 or abrogate the scope or nature of any statutory or common-law
341 privilege, including the work-product doctrine and the attorney-
342 client privilege.

343 Section 11. Section 559.963, Florida Statutes, is created
344 to read:

345 559.963 Violation; enforcement.—

346 (1) A violation of this part is considered an unfair and
347 deceptive trade practice actionable under part II of chapter
348 501.

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349 (2) This section does not limit:

350 (a) The enforcing authority's exercise of powers or
351 performance of duties that the enforcing authority is otherwise
352 legally authorized or required to exercise or perform; or

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

355 Section 12. This act shall take effect July 1, 2021.