

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 an 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.

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);

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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

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101 certificate of authority with the department stating that it is  
102 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:

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 changes  
128 or becomes inaccurate in any respect. A litigation financier who  
129 is not a corporation, limited liability company, or partnership  
130 may amend his or her registration by filing with the department  
131 an amendment on a form prescribed by the department.

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

137           (a) Must specifically state all grounds for revocation;  
138 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 after 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  
146 determined by the department does not exist. The department  
147 shall revoke the litigation financier registration of a  
148 litigation financier who fails to comply with the requirements  
149 of this section.

150       (6) The department has the authority reasonably necessary

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151 to enable it to administer this section efficiently, to perform  
152 duties imposed upon it, and to adopt rules to implement this  
153 section.

154 Section 4. Section 501.1003, Florida Statutes, is created  
155 to read:

156 501.1003 Litigation financing contracts; terms.—The  
157 litigation financing terms must be set forth in a written  
158 contract containing all of the following:

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

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

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

174 Section 5. Section 501.1004, Florida Statutes, is created  
175 to read:

176 501.1004 Prohibited conduct.—A litigation financier may  
 177 not:

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

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

185 (3) Advertise false or misleading information about its  
 186 products or services;

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

192 (5) Fail to promptly supply a copy of any complete  
 193 litigation financing contract to a consumer;

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

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



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

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 course 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; or

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 fees and charges owed under the  
 220 existing contract, unless the consumer consents to a  
 221 contemporaneous financing arrangement in writing.

222       Section 6. Section 501.1005, Florida Statutes, is created  
 223 to read:

224       501.1005 Required disclosures.-

225       (1) A litigation financing contract must contain all of

226 | the following disclosures on the front page of the contract in  
227 | at 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 does not  
231 | have the right to, and may not make any decisions or attempt to,  
232 | influence the consumer or his or her attorney about the conduct  
233 | of the civil action or claim that is the subject of the contract  
234 | and that the right to make such decisions remains solely with  
235 | the consumer.

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

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

239 |     (e) The interest rate.

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

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

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

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.

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 AFTER 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:

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, and charges.—

302 (1) A litigation financier may not directly or indirectly  
 303 charge, contract for, or receive an interest rate of greater  
 304 than 10 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 after 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

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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.—

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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, 2022.