

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.; authorizing
21 litigation financiers to assess specified interest,
22 fees, and charges; providing requirements for such
23 interest, fees, and charges; prohibiting a litigation
24 financier from assessing specified fees or charges;
25 creating s. 501.1007, F.S.; providing that specified

26 | communications between attorneys and litigation
 27 | financiers do not effect statutory or common-law
 28 | privilege; creating s. 501.1008, F.S.; providing that
 29 | violations of the act are deceptive and unfair trade
 30 | practices; providing construction; providing an
 31 | effective date.

32 |

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

34 |

35 | Section 1. Part VIII of chapter 501, Florida Statutes,
 36 | consisting of sections 501.1001, 501.1002, 501.1003, 501.1004,
 37 | 501.1005, 501.1006, 501.1007, and 501.1008, Florida Statutes, is
 38 | created and entitled "Litigation Financing Consumer Protection
 39 | Act."

40 | Section 2. Section 501.1001, Florida Statutes, is created
 41 | to read:

42 | 501.1001 Definitions.—As used in this part, the term:

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

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

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

47 | (4) "Health care practitioner" has the same meaning as in
 48 | s. 456.001.

49 | (5) "Interest" means the cost of obtaining litigation
 50 | financing and includes any profit or advantage of any kind

51 whatsoever that a litigation financier may charge, contract for,
52 collect, receive, or in any way obtain as a condition for a
53 litigation financing contract. Charges and fees specifically
54 authorized by this part are not interest.

55 (6) "Litigation financier" means a person engaged in the
56 business of litigation financing.

57 (7) "Litigation financing" means a nonrecourse transaction
58 in which a litigation financier provides funds to a consumer in
59 exchange for an assignment of the consumer's contingent right to
60 receive an amount of the potential net proceeds of the
61 consumer's civil action or claim. The term does not include:

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

66 (b) A commercial tort claim as defined in s.
67 679.1021(1)(m);

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

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

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

73 (8) "Net proceeds" means the portion of the proceeds of a
74 civil action or claim remaining after satisfaction of all liens
75 with a higher priority than that of the litigation financier as

76 | specified in s. 501.1006(2).

77 | Section 3. Section 501.1002, Florida Statutes, is created
78 | to read:

79 | 501.1002 Litigation financier registration; registration
80 | revocation.-

81 | (1) A litigation financier may not engage in litigation
82 | financing in the state before registering as a litigation
83 | financier under this section.

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

87 | 1. Met the bond requirements of subsection (2);
88 | 2. A status of active and in good standing as reflected in
89 | department records; and

90 | 3. Filed articles of organization or incorporation, a
91 | certificate of limited partnership, or another organizational
92 | document, or, if a foreign entity, an application for a
93 | certificate of authority with the department stating therein
94 | that it is a litigation financier.

95 | (b) A litigation financier who is not a corporation,
96 | limited liability company, or partnership is registered under
97 | this section if he or she has:

98 | 1. Met the bond requirements of subsection (2); and
99 | 2. Filed a litigation financier registration application
100 | with the department on a form prescribed by the department

- 101 containing, at a minimum:
- 102 a. The applicant's full legal name and fictitious name, if
- 103 any;
- 104 b. The applicant's physical address, mailing address, and
- 105 telephone number;
- 106 c. A statement that the applicant is a litigation
- 107 financier; and
- 108 d. Any other information the department deems necessary.
- 109 (2) A litigation financier must file with the department a
- 110 \$250,000 surety bond, which bond must be:
- 111 (a) Issued by a surety company authorized to do business
- 112 in the state.
- 113 (b) Payable to the department for the payment of damages
- 114 awarded to a consumer under part II of this chapter.
- 115 (c) Effective so long as the department's records
- 116 designate the litigation financier as such or a litigation
- 117 financing contract with the litigation financier is effective.
- 118 (3) A litigation financier must amend its registration
- 119 within 30 days after the date the information contained therein
- 120 changes or becomes inaccurate in any respect. A litigation
- 121 financier who is not a corporation, limited liability company,
- 122 or partnership may amend his or her registration by filing with
- 123 the department an amendment on a form prescribed by the
- 124 department.
- 125 (4) If the department determines that a litigation

126 financier has not complied with the requirements of this
 127 section, the department shall serve the litigation financier
 128 notice in a record of its intent to revoke the registration of
 129 the litigation financier. Such notice:

130 (a) Must specifically state all grounds for revocation;
 131 and

132 (b) May be sent by electronic mail to a litigation
 133 financier that provided the department with an electronic mail
 134 address.

135 (5) A litigation financier has 60 days after the date the
 136 department sends the notice under subsection (4) to correct the
 137 grounds for revocation or demonstrate to the reasonable
 138 satisfaction of the department that each ground determined by
 139 the department does not exist. The department shall revoke the
 140 litigation financier registration of any litigation financier
 141 who fails to comply with the requirements of this section.

142 (6) The department has the authority reasonably necessary
 143 to enable it to administer this section efficiently, to perform
 144 duties imposed upon it, and to adopt rules to implement this
 145 section.

146 Section 4. Section 501.1003, Florida Statutes, is created
 147 to read:

148 501.1003 Litigation financing contracts; terms.—The
 149 litigation financing terms must be set forth in a written
 150 contract containing:

HB 1447

2023

151 (1) A right of rescission allowing the consumer to cancel
152 the contract without penalty, interest, fees, charges, or
153 further obligation if, within 5 business days after execution of
154 a contract or receipt of funds by the consumer, whichever is
155 later, the consumer provides written rescission notice and
156 returns any funds already provided under the contract to the
157 litigation financier;

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

161 (3) A statement indicating that, in the event the proceeds
162 of the subject civil action or claim are paid into a settlement
163 fund or trust, the litigation financier must notify the fund or
164 trust administrator of any outstanding financial obligations
165 arising from the contract.

166 Section 5. Section 501.1004, Florida Statutes, is created
167 to read:

168 501.1004 Prohibited conduct.—A litigation financier may
169 not:

170 (1) Pay or offer to pay a commission, referral fee, or
171 other consideration to any person, including an attorney, law
172 firm, or health care practitioner, for referring a consumer to a
173 litigation financier;

174 (2) Accept a commission, referral fee, rebate, or other
175 consideration from any person, including an attorney, law firm,

- 176 | or health care practitioner;
- 177 | (3) Advertise false or misleading information about its
- 178 | products or services;
- 179 | (4) Refer a consumer to a specific attorney, law firm, or
- 180 | health care practitioner, except that, if a consumer lacks legal
- 181 | representation, the litigation financier may refer the consumer
- 182 | to an attorney referral service operated by a county or state
- 183 | bar association;
- 184 | (5) Fail to promptly supply a copy of any complete
- 185 | litigation financing contract to the consumer;
- 186 | (6) Attempt to obtain a waiver of any remedy, including,
- 187 | but not limited to, compensatory, statutory, or punitive
- 188 | damages, that the consumer might otherwise have in the subject
- 189 | civil action or claim;
- 190 | (7) Attempt to effect arbitration or waiver of a
- 191 | consumer's right to a jury trial in the subject civil action or
- 192 | claim;
- 193 | (8) Offer or provide legal advice to the consumer
- 194 | regarding the litigation financing contract or the subject civil
- 195 | action or claim;
- 196 | (9) Assign a litigation financing contract in whole or in
- 197 | part; or
- 198 | (10) Direct, or make any decisions with respect to, the
- 199 | course of the subject civil action or claim or any settlement
- 200 | thereof.

201 Section 6. Section 501.1005, Florida Statutes, is created
 202 to read:

203 501.1005 Required disclosures.-

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

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

209 (b) A statement that the litigation financier does not
 210 have the right to, and may not make any decisions or attempt to,
 211 influence the consumer or his or her attorney about the conduct
 212 of the civil action or claim that is the subject of the contract
 213 and that the right to make such decisions remains solely with
 214 the consumer;

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

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

218 (e) The interest rate;

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

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

224 (h) The cumulative amount due from the consumer for all
 225 litigation financing contracts if the consumer seeks multiple

226 contracts and makes repayment any time after contract execution.
227 (2) A litigation financing contract must also contain the
228 following disclosure on the front page of the contract in at
229 least 18-point uppercase and boldfaced type:

230
231 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS
232 CONTRACT WITHOUT PENALTY, INTEREST, FEES, CHARGES, OR
233 FURTHER OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE
234 DATE OF CONTRACT EXECUTION OR RECEIPT OF FUNDS FROM
235 [(INSERT NAME OF THE LITIGATION FINANCIER), WHICHEVER
236 IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION
237 AND BY RETURNING THE FUNDS TO [(INSERT NAME OF THE
238 LITIGATION FINANCIER)]. FOR PURPOSES OF THE DEADLINE,
239 THE POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S.
240 MAIL, OR THE DATE OF THE RETURN RECEIPT REQUESTED IF
241 MAILED BY CERTIFIED MAIL, WILL BE CONSIDERED THE DATE
242 OF RETURN OF THE FUNDS.

243
244 (3) A litigation financing contract must contain the
245 following disclosure immediately above the consumer's signature
246 line in 18-point uppercase and boldfaced type:

247
248 DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY
249 OR IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK
250 SECTIONS. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD

251 CONSULT AN ATTORNEY. YOU MAY ALSO WANT TO CONSULT A
 252 TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN
 253 ACCOUNTANT.

254 Section 7. Section 501.1006, Florida Statutes, is created
 255 to read:

256 501.1006 Interest, fees, charges, and penalties.—

257 (1) A litigation financier may not directly or indirectly
 258 charge, contract for, or receive an interest rate of greater
 259 than 25 percent of the funded amount per annum. In determining
 260 compliance with the statutory maximum interest rate, the
 261 computations used must be simple interest and not add-on
 262 interest or any other computations.

263 (2) The maximum interest rate that may be contracted for
 264 and received by a litigation financier is 12 times the maximum
 265 monthly rate, and the maximum monthly rate must be computed on
 266 the basis of one-twelfth of the annual rate for each full month.
 267 The maximum daily rate must be computed on the basis of the
 268 maximum monthly rate divided by the number of days in the month.

269 (3) Interest may only accrue until a court enters a final
 270 order or a settlement agreement is executed in the civil action
 271 or claim that is the subject of the litigation financing
 272 contract, whichever is earlier, but interest may not accrue for
 273 a period exceeding 3 years after the date the consumer receives
 274 the funds from the litigation financier. The total interest
 275 assessed must be calculated based on the actual number of days

HB 1447

2023

276 for which interest accrued.

277 Section 8. Section 501.1007, Florida Statutes, is created
278 to read:

279 501.1007 Effect of communication on privilege.—
280 Communication between a consumer's attorney and a litigation
281 financier regarding a litigation financing contract does not
282 limit, waive, or abrogate the scope or nature of any statutory
283 or common-law privilege, including the work-product doctrine and
284 the attorney-client privilege.

285 Section 9. Section 501.1008, Florida Statutes, is created
286 to read:

287 501.1008 Violation; enforcement.—

288 (1) A violation of this part is an unfair and deceptive
289 trade practice actionable under part II of this chapter.

290 (2) This section does not limit the:

291 (a) Enforcing authority's exercise of powers or
292 performance of duties which the enforcing authority is otherwise
293 legally authorized or required to exercise or perform; or

294 (b) Rights and remedies available to the state or a person
295 under any other law.

296 Section 10. This act shall take effect July 1, 2023.