

By Senator Yarborough

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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. 501.998, F.S.; defining terms;
6 creating s. 501.9981, F.S.; requiring litigation
7 financiers to register with the Department of State
8 before engaging in litigation financing in this state;
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. 501.9982,
15 F.S.; providing requirements for litigation financing
16 contracts; creating s. 501.9983, F.S.; prohibiting
17 litigation financiers from engaging in specified
18 conduct; creating s. 501.9984, F.S.; providing
19 disclosure requirements for litigation financing
20 contracts; creating s. 501.9985, F.S.; providing
21 requirements for litigation financiers to assess
22 specified interest, fees, and charges; creating s.
23 501.9986, F.S.; providing that specified
24 communications between attorneys and litigation
25 financiers do not affect statutory or common-law
26 privilege; creating s. 501.9987, F.S.; providing that
27 violations of the act are deceptive and unfair trade
28 practices; providing construction; providing an
29 effective date.

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30
31 Be It Enacted by the Legislature of the State of Florida:
32

33 Section 1. Part VIII of chapter 501, Florida Statutes,
34 consisting of ss. 501.998, 501.9981, 501.9982, 501.9983,
35 501.9984, 501.9985, 501.9986, and 501.9987, is created and
36 entitled "Litigation Financing Consumer Protection Act."

37 Section 2. Section 501.998, Florida Statutes, is created to
38 read:

39 501.998 Definitions.—As used in this part, the term:

40 (1) "Consumer" means any individual.

41 (2) "Department" means the Department of State.

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

44 (4) "Health care practitioner" has the same meaning as in
45 s. 456.001.

46 (5) "Interest" means the cost of obtaining litigation
47 financing and includes any profit or advantage of any kind that
48 a litigation financier may charge, contract for, collect,
49 receive, or in any way obtain as a condition for a litigation
50 financing contract. The term does not include charges and fees
51 specifically authorized by this part.

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

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

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59 of the following:

60 (a) Legal services provided to a consumer on a contingency
61 fee basis, or advanced legal costs, where such services or costs
62 are provided by an attorney representing the consumer in
63 accordance with rules regulating The Florida Bar for
64 professional conduct.

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

67 (c) A worker's compensation claim under chapter 440.

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

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

72 (8) "Net proceeds" means the portion of the proceeds of a
73 civil action or claim remaining after satisfaction of all liens
74 with a higher priority than that of the litigation financier as
75 specified in s. 501.1006(2).

76 Section 3. Section 501.9981, Florida Statutes, is created
77 to read:

78 501.9981 Litigation financier registration; registration
79 revocation.—

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

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

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

87 2. A status of active and in good standing as reflected in

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88 department records; and

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

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

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

98 2. Filed a litigation financier registration application
99 with the department on a form prescribed by the department
100 containing, at a minimum:

101 a. The applicant's full legal name and fictitious name, if
102 any;

103 b. The applicant's physical address, mailing address, and
104 telephone number;

105 c. A statement that the applicant is a litigation
106 financier; and

107 d. Any other information the department deems necessary.

108 (2) A litigation financier must file with the department a
109 \$250,000 surety bond, which bond must be:

110 (a) Issued by a surety company authorized to do business in
111 this state.

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

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

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117 (3) A litigation financier must amend its registration
118 within 30 days after the date the information contained therein
119 changes or becomes inaccurate in any respect. A litigation
120 financier who is not a corporation, limited liability company,
121 or partnership may amend his or her registration by filing with
122 the department an amendment on a form prescribed by the
123 department.

124 (4) If the department determines that a litigation
125 financier has not complied with the requirements of this
126 section, the department must serve the litigation financier
127 notice in a record of its intent to revoke the registration of
128 the litigation financier. Such notice:

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

130 (b) May be sent by e-mail to a litigation financier that
131 provided the department with an e-mail address.

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

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

143 Section 4. Section 501.9982, Florida Statutes, is created
144 to read:

145 501.9982 Litigation financing contracts; terms.—The

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146 litigation financing terms must be set forth in a written
147 contract containing all of the following information:

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

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

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

163 Section 5. Section 501.9983, Florida Statutes, is created
164 to read:

165 501.9983 Prohibited conduct.—A litigation financier may not
166 do any of the following:

167 (1) Pay or offer to pay a commission, referral fee, or
168 other consideration to any person, including an attorney, law
169 firm, or health care practitioner, for referring a consumer to a
170 litigation financier.

171 (2) Accept a commission, referral fee, rebate, or other
172 consideration from any person, including an attorney, law firm,
173 or health care practitioner.

174 (3) Advertise false or misleading information about its

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175 products or services.

176 (4) Refer a consumer to a specific attorney, law firm, or
177 health care practitioner, except that, if a consumer lacks legal
178 representation, the litigation financier may refer the consumer
179 to an attorney referral service operated by a county or state
180 bar association.

181 (5) Fail to promptly supply a copy of any complete
182 litigation financing contract to the consumer.

183 (6) Attempt to obtain a waiver of any remedy, including,
184 but not limited to, compensatory, statutory, or punitive
185 damages, that the consumer might otherwise have in the subject
186 civil action or claim.

187 (7) Attempt to affect arbitration or waiver of a consumer's
188 right to a jury trial in the subject civil action or claim.

189 (8) Offer or provide legal advice to the consumer regarding
190 the litigation financing contract or the subject civil action or
191 claim.

192 (9) Assign a litigation financing contract in whole or in
193 part.

194 (10) Direct, or make any decisions with respect to, the
195 course of the subject civil action or claim or any settlement
196 thereof.

197 Section 6. Section 501.9984, Florida Statutes, is created
198 to read:

199 501.9984 Required disclosures.—

200 (1) A litigation financing contract must contain all of the
201 following disclosures on the front page of the contract in at
202 least 12-point boldfaced type:

203 (a) Notice of the consumer's right to a completely filled-

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204 in contract.

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

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

212 (d) An itemized list of all fees and charges payable by the
213 consumer.

214 (e) The interest rate.

215 (f) The total amount due from the consumer in 6-month
216 intervals for 3 years, including all interest, fees, and
217 charges.

218 (g) A statement that the consumer will not owe any fees or
219 charges other than those described in the disclosures.

220 (h) The cumulative amount due from the consumer for all
221 litigation financing contracts if the consumer seeks multiple
222 contracts and makes repayment any time after contract execution.

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

226
227 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS
228 CONTRACT WITHOUT PENALTY, INTEREST, FEES, CHARGES, OR
229 FURTHER OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE
230 DATE OF CONTRACT EXECUTION OR RECEIPT OF FUNDS FROM
231 [INSERT NAME OF THE LITIGATION FINANCIER], WHICHEVER
232 IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION

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233 AND BY RETURNING THE FUNDS TO [INSERT NAME OF THE
234 LITIGATION FINANCIER]. FOR PURPOSES OF THE DEADLINE,
235 THE POSTMARK DATE ON FUNDS RETURNED BY REGULAR U.S.
236 MAIL, OR THE DATE OF THE RETURN RECEIPT REQUESTED IF
237 MAILED BY CERTIFIED MAIL, WILL BE CONSIDERED THE DATE
238 OF RETURN OF THE FUNDS.

239
240 (3) A litigation financing contract must contain the
241 following disclosure immediately above the consumer's signature
242 line in 18-point uppercase and boldfaced type:

243
244 DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY
245 OR IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK
246 SECTIONS. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD
247 CONSULT AN ATTORNEY. YOU MAY ALSO WANT TO CONSULT A
248 TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN
249 ACCOUNTANT.

250 Section 7. Section 501.9985, Florida Statutes, is created
251 to read:

252 501.9985 Interest, fees, charges, and penalties.—

253 (1) A litigation financier may not directly or indirectly
254 charge, contract for, or receive an interest rate of greater
255 than 35 percent of the funded amount per annum. In determining
256 compliance with the statutory maximum interest rate, the
257 computations used must be simple interest and not add-on
258 interest or any other computation.

259 (2) The maximum interest rate that may be contracted for
260 and received by a litigation financier is 12 times the maximum
261 monthly rate, and the maximum monthly rate must be computed on

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262 the basis of one-twelfth of the annual rate for each full month.
263 The maximum daily rate must be computed on the basis of the
264 maximum monthly rate divided by the number of days in the month.

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

273 Section 8. Section 501.9986, Florida Statutes, is created
274 to read:

275 501.9986 Effect of communication on privilege.-
276 Communication between a consumer's attorney and a litigation
277 financier regarding a litigation financing contract does not
278 limit, waive, or abrogate the scope or nature of any statutory
279 or common-law privilege, including the work-product doctrine and
280 attorney-client privilege.

281 Section 9. Section 501.9987, Florida Statutes, is created
282 to read:

283 501.9987 Violation; enforcement.-

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

286 (2) This section does not limit the:

287 (a) Enforcing authority's exercise of powers or performance
288 of duties that the enforcing authority is otherwise legally
289 authorized or required to exercise or perform; or

290 (b) Rights and remedies available to the state or a person

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291 under any other law.

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