HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1179 Litigation Financing
SPONSOR(S): Gregory and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 7 N	Mawn	Jones
2) Justice Appropriations Subcommittee		Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Litigation financing is a non-recourse transaction in which a litigation financier provides funds to a party to a civil lawsuit, or an attorney thereof, in exchange for a right to receive a portion of any monetary recovery awarded to the party. Litigation financiers invest in a variety of lawsuits based on the lawsuit's particular risk profile and the financier's available capital. An unscrupulous litigation financier may invest in lawsuits for reasons other than a return on investment, and may impermissibly attempt to control or direct the lawsuit to maximize the potential return or to further a goal unrelated to the right of financial recovery. Reputable litigation financiers, on the other hand, may implement a demanding due diligence process to ensure their investment in a particular lawsuit is financially sound.

Unlike with a traditional loan, where a lender might look at a consumer's credit score, income, and other indicators of the consumer's ability to pay, a litigation financier typically weighs the strength of the claim underlying the civil action, considering the likelihood that the party seeking funding will prevail and the potential damages which may be awarded. In doing so, a litigation financier typically reviews the evidence available in the lawsuit for which litigation financing is sought; depending on the lawsuit's nature, this could result in the litigation financier obtaining proprietary information or information affecting national security interests.

HB 1179 defines litigation financing as an agreement to provide financing to an attorney or party in a civil action in exchange for a right to receive payment, which right is contingent in any respect on the outcome of such action or of any matter within a portfolio that includes such action and involves the same counsel or affiliated counsel, and regulates its practice by:

- Exempting from regulation certain specified types of financing, including financing provided to or for a party to a civil action to pay the party's personal expenses during the pendency of the action.
- Prohibiting a litigation financier from engaging in specified conduct, including making or directing any decision with respect to the funded civil action or recovering more than the plaintiff recovers.
- Requiring that certain parties to a funded civil action make certain disclosures to specified parties, generally including the court, opposing counsel, and the opposing parties, in specified situations.
- Requiring a litigation financing agreement to indemnify the plaintiff to the civil action for certain costs.
- Providing that a litigation financing agreement executed in violation of the bill is void and unenforceable, and providing enforcement mechanisms.

The bill may have an indeterminate fiscal impact on the offices of the state attorneys and the Department of Legal Affairs within the Office of the Attorney General. *See* Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Litigation Financing

Litigation financing is a non-recourse transaction in which a litigation financier provides funds to a party to a civil lawsuit, or an attorney thereof, in exchange for a right to receive a portion of any monetary recovery awarded; in other words, the litigation financier only gets paid if the case resolves in the funded party's favor.[1] This can be a powerful tool for a party to a civil action who, without such funding, might have been forced to abandon the lawsuit or else find an attorney with sufficient financial reserves to front the costs of litigation.[2] Where the opposing party or his or her attorney has significant financial resources, litigation financing may level the playing field.[3]

Litigation financiers invest in a variety of lawsuits based on the lawsuit's particular risk profile and the financier's available capital.[4] An unscrupulous litigation financier may invest in lawsuits for reasons other than a pure return on investment, and may impermissibly attempt to control or direct the lawsuit to maximize the potential return or to further a goal unrelated to the right to financial recovery.[5] Reputable litigation financiers, on the other hand, may implement a demanding due diligence process to ensure their investment in a particular lawsuit is financially sound.[6] Unlike with a traditional loan, where a lender might look at a consumer's credit score, income, and other indicators of the consumer's ability to repay the loan, a litigation financier typically looks at the strength of the claim underlying the civil action, considering the likelihood that the party or attorney seeking funding will prevail and the potential damages which may be awarded.[7]

In weighing the strength of the claim, a litigation financier typically reviews the evidence available in the lawsuit for which litigation financing is sought.[8] Depending on the lawsuit's nature, this could result in a litigation financier obtaining proprietary information or information affecting national security interests.

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[1] Giugi Carminati, *Litigation Finance: A Modern Financial Tool for Corporate Counsel, American Bar Association: Business Law Today* (Dec. 2022), https://www.americanbar.org/groups/business_law/resources/business-law-today/2022-december/a-modern-financial-tool-for-corporate-counsel/ (last visited Jan. 25, 2024).
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *See, e.g., Bollea v. Gawker Media*, LLC, 913 F. Supp. 2d 1325 (M.D. Fla. 2012). Therein, Terry Bollea (known professionally as Hulk Hogan) sued Gawker Media for publishing on its website a video of Bollea engaging in sexual relations with a married woman. The lawsuit gained national attention for several reasons, among them the fact that billionaire and PayPal co-founder Peter Thiel had secretly funded Bollea's lawsuit; significantly, Gawker had published a piece outing Thiel as gay in 2007, and, many viewed Thiel's decision to fund Bollea's lawsuit as Thiel's revenge against Gawker (a charge which Thiel denied). The jury ultimately found Gawker liable and awarded Bollea $115 million in compensatory damages and $25 million in punitive damages; a few months later, Gawker filed for Chapter 11 bankruptcy and sold several of its media outlets before settling with Bollea for $31 million. John Freund, *The 6th Anniversary of the Peter Thiel/Hulk Hogan/Gawker Case: What Have We Learned,* Litigation Finance Journal (Mar. 17, 2022), https://litigationfinancejournal.com/the-6th-anniversary-of-the-peter-thiel-hulk-hogan-gawker-case-what-have-we-learned/ (last visited Jan. 25, 2024); *see also, e.g., Sysco Corp. v. Glaz LLC, et al.*, Case 1:23-cv-01451 (N.D. Ill. 2023). Therein, Sysco sued subsidiaries of Burford Capital Limited, a litigation financier from which Sysco had obtained financing for antitrust litigation, for preventing Sysco from accepting reasonable settlement offers in said litigation in order to increase Burford Capital's return and thereby forcing Sysco to continue litigating against its will. Sysco later settled the matter, ceding control over its lawsuits to Burford Capital. Emily R. Siegel, *Bloomberg Law*, https://news.bloomberglaw.com/business-and-practice/everybody-wins-as-sysco-hands-burford-control-of-lawsuits (last visited Jan. 25, 2024).
[6] Carminati, *supra* note 1.
[7] Paige Marta Skiba and Jean Xiao, Consumer Litigation Funding: Just Another Form of Payday Lending?, Law and Contemporary Problems Vol. 80 No. 117 (Nov. 3, 2017), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4840&context=lcp (last visited Jan. 25, 2024).
[8] Carminati, *supra* note 1

Concern has been expressed that:

- Where the litigation financier is a foreign actor, the foreign actor could use such information to advance its strategic interests against the United States.[9]
- Where a foreign actor provides litigation financing, the foreign actor obtains a financial interest in the financed lawsuit's outcome, which interest may be used to attempt to influence the lawsuit's direction and other decisions related thereto for purposes which may be adverse to the interests of the United States.[10]

Class Action Lawsuits

A "class action" is a procedural device that allows one or more plaintiffs to file and prosecute a lawsuit on behalf of a large group of individuals (the "class") who have suffered the same wrong at the hands of the defendant.[11] Practically speaking, a class action allows courts to manage lawsuits that would be otherwise unmanageable if each class member were required to join in the lawsuit as a named plaintiff.[12] Such actions also protect the defendant from inconsistent judgments and facilitate the spreading of litigation costs among numerous litigants.[13]

A class action lawsuit may be brought in federal court and, in certain instances, in state court; in either case, the judgment or any settlement is binding on all class members, who are thereafter generally prohibited from filing their own individual lawsuits raising the same claim.[14] However, a defined class, rather uniquely, may include a person harmed by the defendant in the same manner as the other class members without such person ever receiving notice of the action.[15] Thus, courts must be particularly careful to ensure that a lawsuit can be fairly adjudicated as a class action.[16]

Consolidated Actions

When civil actions involving a common question of law or fact are pending before a Florida court, the Florida Rules of Civil Procedure authorize the court to order a joint hearing or trial of any or all of the matters in issue in the actions; to consolidate all the actions into one action; and to make such orders about proceedings therein to avoid unnecessary costs or delay.[17] However, in determining whether to consolidate civil actions, the court must consider whether:

- The trial process will be accelerated due to the consolidation;
- Unnecessary costs and delays can be avoided by consolidation;
- There is otherwise the possibility for inconsistent verdicts;
- Consolidation would eliminate duplicative trials involving substantially the same operative facts and questions of law; and
- Consolidation would deprive a party of a substantive right.[18]

[9] U.S. Chamber of Commerce, *Institute for Legal Reform, Bipartisan Federal Legislation Tackles Foreign Influence in Third Party Litigation Funding*, https://instituteforlegalreform.com/blog/bipartisan-federal-legislation-tackles-foreign-influence-in-third-party-litigation-funding/ (last visited Jan. 25, 2024).
[10] *Id.*
[11] Class actions are often appropriate to address environmental harms (such as for oil spills or the release of toxic chemicals); large-scale consumer fraud (such as for misleading or false advertising); anti-trust violations (such as the artificial raising or fixing of prices for goods or services); product defects (where the entire line is defective, such as for defective airbags or contaminated food items); data breaches (such as those for the release of personal and payment information); civil rights violations (such as was evidenced in the *Brown v. Board of Education* lawsuit) and dangerous pharmaceuticals (such as was evidenced in the opioid crisis litigation). Legal Information Institute, *Class Action*, https://www.law.cornell.edu/wex/class_action (last visited Jan. 25, 2024).
[12] *Id.*
[13] *Id.*
[14] *Id.*; *see* Fed. R. Civ. P. 23.; s. 768.734, F.S.
[15] Legal Information Institute, *supra* note 12.
[16] *Id.*
[17] Fla. R. Civ. Pro. 1.270(a).
[18] *State Farm Fla. Ins. Co. v. Bonham*, 886 So. 2d 1072 (Fla. 5th DCA 2004).

Indemnification

"Indemnification" occurs when one person compensates (that is, "indemnifies") another person for damages or losses the indemnified person incurred or will incur related to a particular event or incident.[19] Typically, indemnification is voluntarily provided for in a written contract executed between the person who will indemnify and the person who will be indemnified.[20] However, indemnification may also be required by law in certain circumstances.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") prohibits unfair methods of competition, and unconscionable, unfair, or deceptive acts or practices in the conduct of any trade or commerce.[21] FDUTPA operates for the purposes of:[22]

- Simplifying, clarifying, and modernizing the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices;
- Protecting the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce; and
- Making state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

FDUTPA provides investigative and enforcement authority to a state attorney if a violation occurs in or affects the judicial circuit under the office's jurisdiction, and to the Department of Legal Affairs ("DLA") within the Office of the Attorney General if a violation occurs in or affects more than one judicial circuit, or if a state attorney defers to DLA or fails to act within 90 days.[23] An enforcing authority may, within four years after a violation occurs or within two years after the last payment in a transaction involved in a violation, bring an action:

- To obtain a declaratory judgment that an act or practice violates FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate FDUTPA; or
- On behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.[24]

Additionally, an enforcing authority may collect a civil penalty of up to $10,000 per violation plus reasonable attorney fees and costs for a willful violation and up to a $15,000 penalty plus reasonable attorney fees and costs for a willful violation involving a senior citizen, a disabled person, a military servicemember, or the spouse or dependent child of a military servicemember.[25] DLA may also issue a cease and desist order if such order would be in the public's interest.[26]

FDUTPA also creates a private cause of action for any person aggrieved by a violation of FDUTPA to:

- Obtain a declaratory judgement that an act or practice violates FDUTPA;
- Enjoin a person who has violated, is violating, or is otherwise likely to violate this part; and
- Recover actual damages plus reasonable attorney fees and costs.[27]

[19] Legal Information Institute, *Indemnify*, https://www.law.cornell.edu/wex/indemnify (last visited Jan. 25, 2024).
[20] *Id.*
[21] The term "trade or commerce" is defined as advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. The term includes the conduct of any trade or commerce including any nonprofit or not-for-profit person or activity. Ss. 501.203(8) and 501.204(1), F.S.
[22] S. 501.202, F.S.
[23] Ss. 501.203(2), 501.206, and 501.207, F.S.
[24] S. 501.207(1) and (5), F.S.
[25] Ss. 501.2075, 501.2077, and 501.2105, F.S.
[26] S. 501.208(1), F.S.
[27] Ss. 501.2105 and 501.211, F.S.

Effect of Proposed Changes

HB 1179 creates the Litigation Investment Safeguards and Transparency Act in Part II of Chapter 69, F.S., to regulate certain types of litigation financing in Florida.

Definitions

The bill creates s. 69.101, F.S., to provide definitions. Specifically, the bill defines "litigation financing agreement" or "litigation financing" as a transaction in which a litigation financier agrees to provide financing to an attorney or party in a civil action in exchange for a right to receive payment, which right is contingent in any respect on the outcome of such action or on the outcome of any matter within a portfolio that includes such action and involves the same counsel or affiliated counsel. However, under the bill, the terms do not apply to:

- An agreement in which funds are provided for or to a party to a civil action for such person's use in paying his or her costs of living or other personal or familial expenses while the action is pending, if such funds are not used to finance the action itself or other legal costs.
- An agreement in which an attorney consents to provide legal services on a contingency fee basis or to advance his or her client's legal costs.
- An entity (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to a civil action.
- A health insurer that has paid, or is obligated to pay, any sums for health care for an injured person under the terms of a health insurance plan or agreement.
- The repayment of a financial institution for loans made to a party to a civil action, when repayment of the loan is not contingent upon such lawsuit's outcome.
- Funding provided to a nonprofit legal organization funded by private donors that represents clients on a pro bono basis, if the nonprofit legal organization seeks only injunctive relief on behalf of its clients.

The bill also defines:

- "Foreign person" to mean a person that is not:
  - A United States citizen;
  - An alien lawfully admitted for permanent United States residence;
  - An unincorporated association, a majority of members of which are United States citizens or aliens lawfully admitted for permanent United States residence; or
  - A corporation that is incorporated in the United States.
- "Foreign principal" to mean:
  - The government or a government official of a foreign country;
  - A political subdivision or political party of a foreign country; or
  - A partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country whose shares or other ownership interest is owned by the government, a government official, a political subdivision, or a political party of a foreign country.
- "Health care practitioner" to mean any person licensed under any of the following chapters of the Florida Statutes: 457; 458; 459; 460; 461; 462; 463; 464; 465; 466; 467; part I, part II, part III, part V, part X, part XIII, or part XIV of 468; 478; 480; part I, part II, or part III of 483; 484; 486; 490; or 491.
- "Litigation financier" to mean a person engaged in the business of providing litigation financing.
- "National security interest" to mean those interests relating to the national defense, foreign intelligence and counterintelligence, international and domestic security, and foreign relations.
- "Proprietary information" to mean information developed, created, or discovered by a person, or which became known by or was conveyed to the person, which has commercial value in the person's business (such as trade secrets, schematics, algorithms, or business research).
- "Sovereign wealth fund" to mean an investment fund owned or controlled by a foreign principal or an agent thereof.

Representation of Client Interests

The bill creates s. 69.103, F.S., to authorize a court to take a litigation financing agreement's existence into account in the following situations:

- In a class action lawsuit brought in Florida courts when determining whether a class representative or class counsel would adequately and fairly represent the class's interests.
- In actions involving a common question of law or fact pending before the court which may be or have been consolidated when determining whether the lead counsel or any co-lead counsel would adequately and fairly represent the interests of the parties to such actions.

Prohibited Conduct

The bill creates s. 69.105, F.S., to prohibit a litigation financier from:

- Directing, or making any decision with respect to, the course of any civil action for which the litigation financier has provided financing, or any settlement or other disposition thereof. Under the bill, all rights to make decisions with respect to the course and settlement or other disposition of the subject civil action remain solely with the parties thereto and their attorneys.
- Contracting for or receiving a larger share of the proceeds of a financed civil action than the share of the proceeds collectively recovered by the plaintiffs to any such action after the payment of attorney fees and costs.
- Paying or offering to pay a commission, referral fee, or other consideration to any person for referring someone to the litigation financier.
- Assigning or securitizing a litigation financing agreement in whole or in part.
- Being assigned rights to or in a civil action, other than the right to receive a share of the proceeds thereof under the litigation financing agreement.

Required Disclosures

Disclosure of Litigation Financing Agreements

The bill creates s. 69.107, F.S., to provide that a litigation financing agreement is discoverable and to require that specified disclosures relating to a litigation financing agreement be made to certain parties. Specifically, the bill requires:

- An attorney who obtains litigation financing to disclose the financing agreement's existence and deliver a copy thereof to his or her client within 30 days after being retained as counsel by such client or entering into the agreement, whichever is earlier.
- A party to a civil action or the attorney thereof who obtains litigation financing to, except as otherwise stipulated to by the parties to the action or as otherwise ordered by a court of competent jurisdiction, disclose the financing agreement's existence and deliver a copy thereof within 30 days after the action's commencement to:
    - All parties to the civil action;
    - The court in which the action is pending; and
    - Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the action.
- The class counsel of a putative class for which litigation financing is obtained to disclose any legal, financial, or other relationship between the class counsel and the litigation financier that exists separate and apart from the litigation financing agreement itself within 30 days after commencement of such action or the litigation financing agreement's execution, whichever is earlier, to:
    - All parties to the civil action;
    - The court in which the civil action is pending; and
    - Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the civil action.
- The class counsel in a class action or putative class action lawsuit for which litigation financing is obtained to, upon a class member's request, disclose and deliver a copy of the litigation financing agreement to the class member.
- The lead counsel and co-lead counsel, if any, for civil actions consolidated in Florida courts to disclose the existence of a litigation financing agreement entered into in connection with any of the consolidated actions and deliver a copy thereof to:

- All parties to the civil actions;
- The court in which the civil actions are pending; and
- Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the civil actions.

Disclosure of Foreign Financial Interests

Section 69.107, F.S., also requires that specified disclosures of certain foreign financial and related interests be made to certain parties. Specifically, the bill requires a party to a civil action or his or her attorney to, except as otherwise stipulated to by the parties to the action or as otherwise ordered by a court of competent jurisdiction, disclose the name, address, and citizenship or country of incorporation or registration of any foreign person, foreign principal, or sovereign wealth fund that, with respect to the civil action:

- Obtained or will obtain a right to receive payment that is contingent upon the action's outcome or on the outcome of any matter within a portfolio that includes the action and involves the same counsel or affiliated counsel;
- Provided or will provide funds, whether directly or indirectly, which funds have been or will be used to satisfy any term of a litigation financing agreement into which the party or his or her attorney has entered to finance the action; or
- Has received or is entitled to receive proprietary information or information affecting national security interests obtained as a result of the financing of the action by a litigation financing agreement entered into by the party or his or her attorney.

Under the bill, such a disclosure must be made to the following persons:

- All parties to the civil action;
- The court in which the action is pending;
- Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the action;
- The Florida Department of Financial Services; and
- The Office of the Florida Attorney General.

Nature of Disclosure Obligations

Under the bill, the disclosure obligations described above are ongoing obligations. Thus, where a party to a civil action or his or her attorney:

- Enters into or amends a litigation financing agreement after commencing the action, the party or attorney has 30 days after the date of agreement execution or amendment to comply with any applicable disclosure obligations.
- Obtains information relating to the interests of a foreign person, foreign principal, or sovereign wealth fund after commencing the action, the party or attorney has 30 days from the date of obtaining such information to comply with any applicable disclosure obligations.

Indemnification by Litigation Financiers

The bill creates s. 69.109, F.S., to require a litigation financier to agree, in any litigation financing agreement, to indemnify the plaintiffs to the funded civil action or their attorneys against any adverse costs, attorney fees, damages, or sanctions that may be ordered or awarded against such persons in such action. However, under the bill, indemnification is not required for those adverse costs, attorney fees, damages, or sanctions which the litigation financier can show resulted from the intentional misconduct of such plaintiffs or their attorneys.

Violations and Enforcement

The bill creates s. 69.111, F.S., to provide that a litigation financing agreement executed in violation of the Litigation Investment Safeguards and Transparency Act is void and unenforceable. Further, under the bill:

- A violation of the bill's prohibited conduct or indemnification provisions is a FDUTPA violation.

- A court may impose fines or any other sanction it deems appropriate upon any person who violates the bill's disclosure obligations.

Severability

The bill provides for severability. Specifically, the bill provides that, if any portion of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill which can be given effect without the invalid provisions.

Applicability

The bill generally applies to a litigation financing agreement entered into on or after July 1, 2024. However, the disclosure obligations created by the bill apply to any civil action pending or commenced on or after July 1, 2024. The bill gives any party to a civil action or the attorney thereof who would have been required to make a disclosure under s. 69.107, F.S., had it been in effect at the time the relevant action occurred, 30 days from July 1, 2024, to comply with the disclosure obligations or else face the possibility of court-imposed sanctions.

Effective Date

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Provides a short title.
Section 2: Designates ss. 69.011-69.081, F.S., as Part I of chapter 69, F.S., relating to general provisions.
Section 3: Creates ss. 69.101-69.109, F.S., relating to litigation financing.
Section 4: Provides for severability.
Section 5: Provides applicability of the disclosure obligations.
Section 6: Provides general applicability.
Section 7: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the private sector to the extent that it shields persons from specified actions of unscrupulous litigation financiers, which actions would have had a negative financial impact on such persons, or allows a person to recover his or her actual damages resulting from a litigation financier's violation of the Act.

D. FISCAL COMMENTS:

The bill may have an indeterminate fiscal impact on the offices of the state attorneys and on DLA to the extent that it may increase the number of FDUTPA claims they enforce. However, to the extent that such entities can likely absorb any additional costs resulting from the bill within existing resources, and that they may recover civil fines and attorney fees under FDUTPA, the fiscal impact to such entities may be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Equal Protection

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part, that "[n]o State shall…deny to any person within its jurisdiction the equal protection of the laws." Though the Constitution does distinguish between citizens and non-citizens in certain respects, this clause, known as the Equal Protection Clause, makes no such distinction; thus, the United States Supreme Court has long interpreted it to apply to all persons within the territorial jurisdiction of the United States, without regard to their national origin.[28] Where a law discriminates between persons on the basis of national origin or other "suspect classifications," courts assess the law under a heightened scrutiny standard, requiring the enacting government to have a compelling interest justifying the discrimination, which discrimination must be carefully tailored to serve such interest.[29]

[28] *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).
[29] The National Constitution Center, *The Equal Protection Clause*, https://constitutioncenter.org/the-constitution/amendments/amendment-xiv/clauses/702 (last visited Jan. 25, 2024).

The bill creates additional disclosure requirements where a foreign person, foreign principal, or sovereign wealth fund has a specified financial interest in or obtains certain information as a result of a civil action, which requirements do not apply where the litigation financier or the entity that obtains such information is a domestic entity. Whether or not the imposition of such additional requirements in this manner violates the Equal Protection Clause is for the courts to decide; however, the State may have a compelling interest in requiring disclosures related to a foreign person, foreign principal, or sovereign wealth fund as contemplated by the bill.

B. RULE-MAKING AUTHORITY:

The bill requires that certain disclosures be made to DFS and the OAG but does not provide either agency with rule-making authority related to such disclosures.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES