

1 A bill to be entitled
2 An act relating to litigation financing consumer
3 protection; creating s. 501.1001; proving definitions;
4 creating s. 501.1002; requiring litigation financiers
5 to register with the Department of State; providing
6 registration requirements; creating s. 501.1003;
7 providing mandatory litigation financing contract
8 terms; creating s. 501.1004; prohibiting litigation
9 financiers from engaging in specified conduct;
10 creating s. 501.1005; providing for mandatory
11 litigation financing contract disclosures; creating s.
12 501.1006; providing for contingent right to civil
13 action proceeds assignability; establishing the
14 priority of liens against or rights to civil action or
15 claim proceeds; creating s. 501.1007; authorizing
16 litigation financiers to charge interest up to a
17 specified amount annually; providing for simple
18 compounding; providing for a maximum annual, monthly,
19 and daily percentage rate; providing a maximum
20 interest accrual period; providing that total interest
21 must be calculated based on the actual number of days
22 for which interest accrued; capping fees and charges a
23 litigation financier may assess; prohibiting a
24 litigation financier from assessing specified fees or
25 charges; creating s. 501.1008; requiring litigation

26 financing contract disclosure under specified
 27 circumstances; creating s. 501.1009; providing that
 28 specified communications between attorneys and
 29 litigation financiers do not limit or waive statutory
 30 or common-law privilege; creating s. 501.1010;
 31 providing that a violation of this part is a violation
 32 of the Florida Deceptive and Unfair Trade Practices
 33 Act; providing that nothing in this section limits the
 34 powers, duties, and rights of specified persons
 35 created under other law; providing an effective date.
 36

37 Be It Enacted by the Legislature of the State of Florida:

38 Section 1. Part VIII of chapter 501, Florida Statutes,
 39 consisting of sections 501.1001, 501.1002, 501.1003, 501.1004,
 40 501.1005, 501.1006, 501.1007, 501.1008, 501.1009, and 501.1010,
 41 is created and may be cited as the "Litigation Financing
 42 Consumer Protection Act."

43 Section 2. Section 501.1001, Florida Statutes, is created
 44 to read:

45 501.1001 Definitions.— As used in this part, the term:

46 (1) "Consumer" means any natural person residing,
 47 physically present, or domiciled in this state.

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

49 (3) "Enforcing authority" has the same meaning as in s.
 50 501.203.

51 (4) "Funded amount" means the funds actually received and
52 retained by a consumer under a litigation financing contract.

53 (5) "Health care practitioner" has the same meaning as in
54 s. 456.001(4).

55 (6) "Interest" means the cost of obtaining litigation
56 financing and includes any profit or advantage of any kind
57 whatsoever that a litigation financier may charge, contract for,
58 collect, receive, or in any way obtain as a condition for a
59 litigation financing contract. Charges and fees specifically
60 permitted by this part shall not be deemed interest.

61 (7) "Litigation financier" means a person engaged in the
62 business of litigation financing.

63 (8) "Litigation financing" means a non-recourse
64 transaction in which a litigation financier provides funds to a
65 consumer in exchange for an assignment of the consumer's
66 contingent right to receive an amount of the potential proceeds
67 of the consumer's civil action or claim. The term does not
68 include:

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

73 (b) A commercial tort claim as defined by s.
74 679.1021(1)(m);

75 (c) A claim under the Workers' Compensation Law in chapter

76 | 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 by 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) No litigation financier may 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

101 certificate of authority with the Department stating therein
 102 that it is a litigation financier.

103 (b) A litigation financier that is not a corporation,
 104 limited liability company, or partnership is registered under
 105 this section if it 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, which bond must be:

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 whenever the information contained therein
128 changes or becomes inaccurate in any respect. A litigation
129 financier that is not a corporation, limited liability company,
130 or partnership may amend its registration by filing with the
131 Department 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 must serve the litigation financier
135 notice in a record of its intent to revoke the litigation
136 financier's registration. Such notice:

137 (a) Must specifically state all grounds for revocation.

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

141 (5) A litigation financier has 60 days from the date the
142 Department sends the notice required by subsection (4) to
143 correct the grounds for revocation or demonstrate to the
144 reasonable satisfaction of the Department that each ground
145 determined by the Department does not exist. The Department must
146 revoke the litigation financier registration of any litigation
147 financier who fails to comply with the requirements of this
148 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 promulgate rules to implement
152 this section.

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

155 501.1003 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, or charges, or
160 further obligation if, within 5 business days after contract
161 execution or funds receipt by the consumer, whichever is later,
162 the consumer provides written rescission notice and returns any
163 funds already provided under the contract to the litigation
164 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 501.1004, Florida Statutes, is created
174 to read:

175 501.1004 Prohibited conduct.— A litigation financier may

176 | not:

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

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

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

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

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

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

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

200 | (8) Offer or provide legal advice to the consumer

201 regarding the litigation financing contract or the subject civil
 202 action or claim;

203 (9) Assign a litigation financing contract in whole or in
 204 part;

205 (10) Report to a consumer credit reporting agency if
 206 insufficient funds remain from the net proceeds of the subject
 207 civil action or claim to repay the litigation financier;

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

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

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

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

223 501.1005 Required disclosures.—

224 (1) A litigation financing contract must contain the
 225 following disclosures on the front page of the contract in at

226 | least 12-point boldfaced type:

227 | (a) Notice of the consumer's right to a completely filled
 228 | in contract;

229 | (b) A statement that the litigation financier has no right
 230 | to and will not make any decisions or attempt to influence the
 231 | consumer or his or her attorney about the conduct of the civil
 232 | action or claim that is the subject of the contract and that the
 233 | right to make such decisions remains solely with the consumer;

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

235 | (d) An itemized list of all fees and charges payable by
 236 | the consumer;

237 | (e) The interest rate;

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

241 | (g) A statement that the consumer will owe no fees or
 242 | charges other than those described in the disclosures;

243 | (h) The cumulative amount due from the consumer for all
 244 | litigation financing contracts if the consumer seeks multiple
 245 | contracts and makes repayment any time after contract execution;

246 | (i) Notice that if the consumer recovers nothing from the
 247 | subject civil action or claim, he or she will owe the litigation
 248 | financier nothing; and

249 | (j) Notice that if the net proceeds of the subject civil
 250 | action or claim are insufficient to fully repay the litigation

251 financier, the litigation financier will accept a reduced sum as
 252 full payment of the funded amount and all fees and charges owed,
 253 which sum may not exceed the net proceeds less proceeds
 254 specifically awarded for future medical expenses.

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

258
 259 CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT
 260 WITHOUT PENALTY, INTEREST, FEES, CHARGES, OR FURTHER OBLIGATION
 261 WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR
 262 RECEIVING FUNDS FROM [INSERT NAME OF THE LITIGATION FINANCIER], WHICHEVER
 263 IS LATER, BY GIVING WRITTEN NOTICE OF THE CANCELLATION AND BY
 264 RETURNING THE FUNDS TO [INSERT NAME OF THE LITIGATION FINANCIER]. FOR
 265 PURPOSES OF THE DEADLINE, THE POSTMARK DATE ON FUNDS RETURNED BY
 266 REGULAR U.S. MAIL, OR THE DATE OF THE RETURN RECEIPT REQUESTED
 267 IF MAILED BY CERTIFIED MAIL, WILL BE CONSIDERED THE DATE OF
 268 RETURN OF THE FUNDS.

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

273
 274 DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR
 275 IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS.

276 BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD CONSULT AN ATTORNEY.
 277 YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL
 278 PROFESSIONAL, OR AN ACCOUNTANT.

279
 280 Section 7. Section 501.1006, Florida Statutes, is created
 281 to read:

282 501.1006 Contingent right to proceeds assignable; priority
 283 of lien or right to proceeds.-

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

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

291 (a) Attorney, insurance carrier, or healthcare
 292 practitioner liens or liens based upon subrogation interests or
 293 reimbursement rights related to the subject civil action or
 294 claim; and

295 (b) Child support, Medicare, tax, or any other statutory
 296 or governmental lien.

297 Section 8. Section 501.1007, Florida Statutes, is created
 298 to read:

299 501.1007 Interest, fees, charges, and penalties.-

300 (1) A litigation financier may not directly or indirectly

301 charge, contract for, or receive an interest rate of greater
302 than 30 percent of the funded amount per annum. In determining
303 compliance with the statutory maximum interest rate, the
304 computations used must be simple interest and not add-on
305 interest or any other computations.

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

312 (3) Interest may only accrue until a court enters a final
313 order or a settlement agreement is executed in the civil action
314 or claim that is the subject of the litigation financing
315 contract, whichever is earlier, but in no case may interest
316 accrue for a period exceeding three years from the date the
317 consumer receives the funds from the litigation financier. The
318 total interest assessed must be calculated based on the actual
319 number of days for which interest accrued.

320 (4) A litigation financier may not directly or indirectly
321 charge, contract for, or receive any fees or charges the
322 combined total of which exceeds \$500 with regard to a single
323 civil action or claim, regardless of the number of litigation
324 financing contracts the consumer enters into with the litigation
325 financier with respect to the civil action or claim.

326 (5) A litigation financier may not directly or indirectly
 327 charge, contract for, or receive any interest, fees, or charges,
 328 for rescission or cancellation of a litigation financing
 329 contract under subsection 501.1003(1).

330 Section 9. Section 501.1008, Florida Statutes, is created
 331 to read:

332 501.1008 Litigation financing contracts; discovery.—
 333 Except as otherwise ordered by the court, a party to any civil
 334 action or claim must, without awaiting a discovery request,
 335 provide to the other parties any contract under which a
 336 litigation financier has a contingent right to receive
 337 compensation sourced from potential proceeds of the civil action
 338 or claim.

339 Section 10. Section 501.1009, Florida Statutes, is created
 340 to read:

341 501.1009 Effect of communication on privilege.— No
 342 communication between a consumer’s attorney and a litigation
 343 financier as it pertains to a litigation financing contract
 344 limits, waives, or abrogates the scope or nature of any
 345 statutory or common-law privilege, including the work-product
 346 doctrine and the attorney-client privilege.

347 Section 11. Section 501.1010, Florida Statutes, is created
 348 to read:

349 501.1010 Violation; enforcement.—

350 (1) A violation of this part is an unfair and deceptive

351 trade practice actionable under part II of this chapter.
 352 (2) Nothing in this section may be construed to limit the:
 353 (a) Enforcing authority's exercise of powers or
 354 performance of duties which the enforcing authority is otherwise
 355 legally authorized or required to exercise or perform.
 356 (b) Rights and remedies available to the state or a person
 357 under any other law.
 358 Section 12. This act shall take effect July 1, 2020.