

LOANS. Provides for the Litigation Financing Disclosure Act. (8/1/24)

AN ACT

To enact Chapter 2-C of Title 12 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 9:3580.1 through R.S. 9:3580.5, relative to the creation of the Litigation Financing Disclosure Act; to provide for definitions, terms, and conditions; to provide for discovery; to provide for contract disclosures; to provide with respect to class action lawsuits; to provide for violations and contracts; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 2-C of Title 12 of the Louisiana Revised Statutes of 1950, comprised of R.S. 9:3580.1 through R.S. 9:3580.5, is hereby enacted to read as follows:

CHAPTER 2-C. LITIGATION FINANCING DISCLOSURE

§3580.1. Short title

This Chapter shall be known and may be cited as the "Litigation Financing Disclosure Act".

§3580.2. Definitions

For the purpose of this Chapter, the following terms have the meanings ascribed to them in this Section:

1 (1) "Attorney" means an attorney, group of attorneys, or law firm who
2 may be entitled to represent a person or persons in a civil action in this state.

3 (2) "Litigation financier" means a person, group of persons, or legal
4 entity, engaged in the business of litigation financing or any other economic
5 activity intended to facilitate litigation financing.

6 (3)(a) "Litigation financing" means the financing, funding, advancing,
7 or loaning of money to pay for fees, costs, expenses, or an agreement to pay
8 expenses directly related to pursuing the legal claim, administrative proceeding,
9 claim, or cause of action, if the financing, funding, advancing, or loaning of
10 money is provided by any person other than a person who is any of the
11 following:

12 (i) A party to the civil action, administrative proceeding, claim, or cause
13 of action.

14 (ii) An attorney engaged, directly or indirectly through another legal
15 representative, to represent a party in the civil action, administrative
16 proceeding, claim, or cause of action.

17 (iii) An entity or insurer with a preexisting contractual obligation to
18 indemnify or defend a party to the civil action, administrative proceeding,
19 claim, or cause of action or a health insurer which has paid, or is obligated to
20 pay, any sums for health care for an injured person under the terms of any
21 health insurance plan or agreement.

22 (b) Funds provided directly to a party solely for personal needs shall not
23 be considered litigation financing provided such funds are provided exclusively
24 for personal and family use and not for legal filings, legal document preparation
25 and drafting, appeals, creation of a litigation strategy, drafting testimony, and
26 related litigation expenses.

27 (4) "Litigation financing contract or agreement" means a transaction in
28 which litigation financing is provided to a party or a party's attorney in return
29 for assigning to the litigation financier a contingent right to receive an amount

1 including payment of interest, fees or any other consideration for the financing
2 provided out of the proceeds of any realized judgment, award, settlement, or
3 verdict the party may receive on the underlying claim or action. The term
4 "litigation financing contract or agreement" does not include:

5 (a) Legal services provided to a party by an attorney on a contingency
6 fee basis, or legal costs advanced by an attorney when such services or costs are
7 provided to or on behalf of a party by an attorney in the dispute and in
8 accordance with the Louisiana Rules of Professional Conduct.

9 (b) The bills, receivables, or liens held by a healthcare provider or their
10 assignee.

11 (c) Secured or unsecured loans made directly to a party or a party's
12 attorney when repayment of the loan is not contingent upon the judgment,
13 award, settlement, or verdict in a claim or action.

14 (5) "Party" means any person or entity or any attorney retained to
15 represent such person or entity in an underlying civil action.

16 (6) "Proprietary information" shall mean information developed,
17 created, or discovered by a party, which became known by, or was conveyed to
18 the party, which has commercial value in the party's business. "Proprietary
19 information" shall include but not be limited to domain names, trade secrets,
20 copyrights, ideas, techniques, inventions, whether patentable or not, and any
21 other information of any type relating to designs, configurations,
22 documentation, recorded data, schematics, circuits, mask works, layouts, source
23 code, object code, master works, master databases, algorithms, flow charts,
24 formulae, works of authorship, mechanisms, research, manufacture,
25 improvements, assembly, installation, intellectual property including patents
26 and patent applications, and the information concerning the entity's actual or
27 anticipated business, research or development, or which is received in
28 confidence by or for the entity from any other source.

29 §3580.3. Disclosure of financing agreements; discovery

1 A. Except as otherwise stipulated by the parties or ordered by the court,
2 a party or a party's attorney shall, without awaiting a discovery request and
3 upon the later of sixty days after the commencement of a civil action or sixty
4 days after execution of the litigation financing agreement, provide to all parties
5 to the civil action, including their insurer, if prior to litigation, any litigation
6 financing contract or agreement under which anyone, other than a legal
7 representative permitted to charge a contingent fee representing a party, has
8 received or has a right to receive compensation or proceeds that are contingent
9 on and sourced from any proceeds of the civil action, by settlement, judgment,
10 or otherwise. The party or the party's attorney may redact the total dollar
11 amount of litigation financing contractually agreed to between the party and the
12 litigation financier prior to the production of the litigation financing contract
13 to all other parties to the litigation.

14 B. Except as otherwise stipulated by the parties or ordered by the court,
15 a party or a party's attorney shall, without awaiting a discovery request and
16 upon the later of sixty days after the commencement of a civil action or sixty
17 days after execution of the litigation financing agreement, provide to all parties
18 to the litigation, including their insurer, if prior to litigation, any litigation
19 financing contract or other agreement under which anyone, other than the
20 party's attorney permitted to charge a contingent fee representing a party, has
21 received or is entitled to receive, proprietary information obtained as a result
22 of the civil action. The party or the party's attorney may redact the total dollar
23 amount of litigation financing contractually agreed to between the party and the
24 litigation financier prior to the production of the litigation financing contract
25 to all other parties to the litigation.

26 C. The existence of litigation financing, litigation financing contract or
27 agreement, and all participants in such financing arrangements are permissible
28 subjects of discovery in all civil actions, including personal injury litigation or
29 claims arising out of personal injuries.

D. This Chapter shall not apply to nonprofit legal organizations funded by private donors that represent clients on a pro bono, no-cost basis provided that the nonprofit legal organization seeks only injunctive relief on behalf of its clients. Awards of costs or attorney fees to nonprofit legal organizations shall not be affected by this Chapter. This Chapter shall not be interpreted to require a nonprofit legal organization to disclose its donors or sources of funding.

§3580.4. Class action lawsuits

This Chapter shall apply to any action filed or certified as a class action. In addition to the disclosure requirements set forth in R.S. 9:3580.3, the attorney of the putative class shall disclose to all parties, putative class members, and the court, any legal, financial, or other relationship between the attorney and the litigation financier.

§3580.5. Violation; absolute nullity of contract

Any litigation financing contract in violation of this Chapter shall be an absolute nullity.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Hanna Gettys.

DIGEST

SB 8 Original2024 Regular SessionEdmonds

Proposed law creates the Litigation Financing Disclosure Act.

Proposed law provides for definitions of "attorney", "litigation financier", "litigation financing", "litigation financing contract or agreement", "party", and "proprietary information".

Proposed law provides that except as otherwise stipulated by the parties or ordered by the court, a party or a party's attorney shall, without awaiting a discovery request and upon the later of 60 days after the commencement of a civil action or 60 days after execution of the litigation financing agreement, provide to all parties to the civil action, including their insurer, if prior to litigation, any litigation financing contract or agreement under which anyone, other than a legal representative permitted to charge a contingent fee representing a party, has received or has a right to receive compensation or proceeds that are contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or otherwise.

Proposed law provides except as otherwise stipulated by the parties or ordered by the court, a party or a party's attorney shall, without awaiting a discovery request and upon the later of 60 days after the commencement of a civil action or 60 days after execution of the litigation financing agreement, provide to all parties to the litigation, including their insurer, if prior to litigation, any litigation financing contract or other agreement under which anyone, other than the party's attorney permitted to charge a contingent fee representing a

party, has received or is entitled to receive, proprietary information obtained as a result of the civil action.

Proposed law further provides that the party or the party's attorney may redact the total dollar amount of litigation financing contractually agreed to between the party and the litigation financier prior to the production of the litigation financing contract to all other parties to the litigation.

Proposed law provides that the existence of litigation financing, litigation financing contract or agreement, and all participants in such financing arrangements are permissible subjects of discovery in all civil actions, including personal injury litigation or claims arising out of personal injuries.

Proposed law shall not apply to nonprofit legal organizations funded by private donors that represent clients on a pro bono, no-cost basis provided that the nonprofit legal organization seeks only injunctive relief on behalf of its clients. Awards of costs or attorney fees to nonprofit legal organizations shall not be affected by proposed law. Proposed law shall not be interpreted to require a nonprofit legal organization to disclose its donors or sources of funding.

Proposed law shall apply to any action filed or certified as a class action. In addition to the disclosure requirements set forth in proposed law, the attorney of the putative class shall disclose to all parties, putative class members, and the court, any legal, financial, or other relationship between the attorney and the litigation financier.

Proposed law provides any litigation financing contract in violation of proposed law shall be an absolute nullity.

Effective August 1, 2024.

(Adds R.S. 9:3580.1-9:3580.5)