

By Senator Collins

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A bill to be entitled

An act relating to litigation financing; providing a short title; designating ss. 69.011-69.081, F.S., as part I of ch. 69, F.S.; creating part II of ch. 69, F.S., relating to litigation financing; creating s. 69.101, F.S.; providing definitions; creating s. 69.103, F.S.; requiring a court's consideration of potential conflicts of interest which may arise from the existence of a litigation financing agreement in specified circumstances; creating s. 69.105, F.S.; prohibiting specified acts by litigation financiers; creating s. 69.107, F.S.; requiring certain disclosures related to litigation financing agreements and the involvement of foreign persons, foreign principals, or sovereign wealth funds; providing for discovery related to litigation financing agreements; creating s. 69.109, F.S.; requiring the indemnification of specified fees, costs, and sanctions by a litigation financier in specified circumstances; creating s. 69.111, F.S.; providing that a litigation financing agreement is void in specified circumstances; providing for enforcement of specified violations under the Florida Deceptive and Unfair Trade Practices Act; providing severability; providing applicability; providing an effective date.

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

Section 1. This act may be cited as the "Litigation

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Investment Safeguards and Transparency Act.”

Section 2. Sections 69.011, 69.021, 69.031, 69.041, 69.051, 69.061, 69.071, and 69.081, Florida Statutes, are designated as part I of chapter 69, Florida Statutes, and entitled “General Provisions.”

Section 3. Part II of chapter 69, Florida Statutes, consisting of ss. 69.101, 69.103, 69.105, 69.107, 69.109, and 69.111, Florida Statutes, is created to read:

PART II

LITIGATION FINANCING

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

(1) “Foreign person” means a person or an entity that is not:

(a) A citizen of the United States;

(b) An alien lawfully admitted for permanent residence in the United States;

(c) An unincorporated association, a majority of members of which are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

(d) A corporation that is incorporated in the United States.

(2) “Foreign principal” means:

(a) The government or a government official of any country other than the United States;

(b) A political subdivision or political party of a country other than the United States; or

(c) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or

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59 having its principal place of business in a country other than
60 the United States whose shares or other ownership interest is
61 owned by the government or a government official of a country
62 other than the United States or owned by a political subdivision
63 or political party of a country other than the United States.

64 (3) "Health care practitioner" has the same meaning as
65 provided in s. 456.001.

66 (4) "Litigation financier" means a person engaged in the
67 business of providing litigation financing.

68 (5) "Litigation financing agreement" or "litigation
69 financing" means a transaction in which a litigation financier
70 agrees to provide financing to a person who is a party to or
71 counsel of record for a civil action, administrative proceeding,
72 claim, or other legal proceeding in exchange for a right to
73 receive payment, which right is contingent in any respect on the
74 outcome of such action, claim, or proceeding or on the outcome
75 of any matter within a portfolio that includes such action,
76 claim, or proceeding and involves the same counsel or affiliated
77 counsel. However, the terms do not apply to:

78 (a) An agreement wherein funds are provided for or to a
79 party to a civil action, administrative proceeding, claim, or
80 other legal proceeding for such person's use in paying his or
81 her costs of living or other personal or familial expenses
82 during the pendency of such action, claim, or proceeding and
83 where such funds are not used to finance any litigation or other
84 legal costs.

85 (b) An agreement wherein an attorney consents to provide
86 legal services on a contingency fee basis or to advance his or
87 her client's legal costs, and where such services or costs are

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provided by the attorney in accordance with the Florida Rules of Professional Conduct.

(c) An entity with a preexisting contractual obligation to indemnify or defend a party to a civil action, administrative proceeding, claim, or other legal proceeding.

(d) 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.

(e) The repayment of a financial institution, as defined in s. 655.005, for loans made directly to a party to a civil action, administrative proceeding, claim, or other legal proceeding or such party's attorney when repayment of the loan is not contingent upon the outcome of such action, claim, or proceeding or on the outcome of any matter within a portfolio that includes such action, claim, or proceeding and involves the same counsel or affiliated counsel.

(f) Funding provided to a nonprofit legal organization funded by private donors that represents clients on a pro bono, no-cost basis, if the nonprofit legal organization seeks only injunctive relief on behalf of its clients. This part does not affect the award of costs or attorney fees to a nonprofit legal organization in the pro bono, no-cost pursuit of injunctive relief.

(6) "National security interests" means those interests relating to the national defense, foreign intelligence and counterintelligence, international, and domestic security, and foreign relations.

(7) "Proprietary information" means information developed, created, or discovered by a person, or which became known by or

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was conveyed to the person, which has commercial value in the person's business. The term includes, but is not limited to, domain names, trade secrets, copyrights, ideas, techniques, inventions, regardless of whether patentable, and other information of any type relating to designs, configurations, documentation, recorded data, schematics, circuits, mask works, layouts, source code, object code, master works, master databases, algorithms, flow charts, formulae, works of authorship, mechanisms, research, manufacture, improvements, assembly, installation, intellectual property including patents and patent applications, and information concerning the person's actual or anticipated business, research, or development or received in confidence by or for the person from any other source.

(8) "Sovereign wealth fund" means an investment fund owned or controlled by a foreign principal or an agent thereof.

69.103 Litigation financing agreement; representation of client interests.—A court may take the existence of a litigation financing agreement into account:

(1) In a class action lawsuit brought in the courts of this state when determining whether a class representative or class counsel would adequately and fairly represent the interests of the class.

(2) 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.

69.105 Prohibited conduct.—A litigation financier may not:

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146 (1) Direct, or make any decisions with respect to, the
147 course of any civil action, administrative proceeding, claim, or
148 other legal proceeding for which the litigation financier has
149 provided financing, or any settlement or other disposition
150 thereof. This prohibition includes, but is not limited to,
151 decisions in appointing or changing counsel, choice or use of
152 expert witnesses, and litigation strategy. All rights to make
153 decisions with respect to the course and settlement or other
154 disposition of the subject civil action, administrative
155 proceeding, claim, or other legal proceeding remain solely with
156 the parties to such action, claim, or proceeding and their
157 counsel of record.

158 (2) Contract for or receive, whether directly or
159 indirectly, a larger share of the proceeds of a civil action,
160 administrative proceeding, claim, or other legal proceeding
161 financed by a litigation financing agreement than the share of
162 the proceeds collectively recovered by the plaintiffs to any
163 such action, claim, or proceeding after the payment of any
164 attorney fees and costs owed in connection to such action,
165 claim, or proceeding.

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

170 (4) Assign or securitize a litigation financing agreement
171 in whole or in part.

172 (5) Be assigned rights to or in a civil action,
173 administrative proceeding, claim, or other legal proceeding for
174 which the litigation financier provided financing, other than

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the right to receive a share of the proceeds of such action,
claim, or proceeding pursuant to the litigation financing
agreement.

69.107 Required disclosures; discovery obligations.—

(1) An attorney who enters into a litigation financing
agreement must disclose the existence and deliver a copy of the
agreement to the client he or she represents in the civil
action, administrative proceeding, claim, or other legal
proceeding financed by the agreement within 30 days after being
retained as counsel by such client, or within 30 days after
entering into the litigation financing agreement, whichever is
earlier.

(2) Except as otherwise stipulated to by the parties to a
civil action, administrative proceeding, claim, or other legal
proceeding, or as otherwise ordered by a court of competent
jurisdiction, a party to or counsel of record for a civil
action, administrative proceeding, claim, or other legal
proceeding who enters into a litigation financing agreement with
respect to such action, claim, or proceeding must, without
awaiting a discovery request and within 30 days after
commencement of such action, claim, or proceeding, disclose the
existence and deliver to the following parties a copy of the
litigation financing agreement:

(a) All parties to the civil action, administrative
proceeding, claim, or other legal proceeding.

(b) The court, agency, or tribunal in which the civil
action, administrative proceeding, claim, or other legal
proceeding is pending.

(c) Any known person, including an insurer, with a

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preexisting contractual obligation to indemnify or defend a party to the civil action, administrative proceeding, claim, or other legal proceeding.

(3) In addition to complying with subsections (1) and (2), the class counsel of a putative class in a class action lawsuit for which litigation financing is obtained must disclose to the following persons the existence of 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 of the execution of the litigation financing agreement, whichever is earlier:

(a) All parties to the civil action, administrative proceeding, claim, or other legal proceeding.

(b) The court, agency, or tribunal in which the civil action, administrative proceeding, claim, or other legal proceeding is pending.

(c) Any known person, including an insurer, with a preexisting contractual obligation to indemnify or defend a party to the civil action, administrative proceeding, claim, or other legal proceeding.

(4) The class counsel in a class action or putative class action lawsuit for which litigation financing is obtained must, upon the request of a class member, disclose and deliver a copy of the litigation financing agreement to the class member.

(5) In addition to complying with subsections (1) and (2), the lead counsel and co-lead counsel, if any, for civil actions consolidated in the courts of this state must disclose to the following parties the existence of and deliver a copy of any

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litigation financing agreement entered into in connection with
any of the consolidated actions:

(a) All parties to the consolidated civil actions.

(b) The court, agency, or tribunal in which the civil
actions are pending.

(c) Any known person, including an insurer, with a
preexisting contractual obligation to indemnify or defend a
party to the civil actions.

(6) (a) A party to a civil action, administrative
proceeding, claim, or other legal proceeding, or such party's
counsel of record, must, except as otherwise stipulated to by
the parties to such action, claim, or proceeding, or as
otherwise ordered by a court of competent jurisdiction, disclose
as prescribed in paragraph (b) 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 action, claim, or proceeding:

1. Obtained or will obtain a right to receive any payment
that is contingent in any respect on the outcome of such civil
action, administrative proceeding, claim, or other legal
proceeding, or on the outcome of any matter within a portfolio
that includes such civil action, administrative proceeding,
claim, or other legal proceeding and involves the same counsel
or affiliated counsel;

2. 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
the party's counsel of record has entered to finance such civil
action, administrative proceeding, claim, or other legal

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proceeding; or

3. Has received or is entitled to receive proprietary information or information affecting national security interests obtained as a result of the financing of such civil action, administrative proceeding, claim, or other legal proceeding by a litigation financing agreement entered into by the party or the party's counsel of record.

(b) The disclosures required in paragraph (a) must be made to the following persons:

1. All parties to the civil action, administrative proceeding, claim, or other legal proceeding.

2. The court, agency, or tribunal in which the civil action, administrative proceeding, claim, or other legal proceeding is pending.

3. Any known person, including an insurer, with a preexisting contractual obligation to indemnify or defend a party to the civil action, administrative proceeding, claim, or other legal proceeding.

4. The Department of Financial Services.

5. The Office of the Attorney General.

(7) The fact of the existence of a litigation financing agreement and the identities of all parties to the agreement are discoverable in any civil action, administrative proceeding, claim, or other legal proceeding financed by such an agreement, unless the court, for good cause shown, determines otherwise.

(8) The disclosure obligations in this section are ongoing obligations. Thus, when a party to a civil action, administrative proceeding, claim, or other legal proceeding, or his or her counsel of record:

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291 (a) Enters into or amends a litigation financing agreement
292 after the commencement of such action, claim, or proceeding, the
293 party or attorney has 30 days after the date of entering into or
294 amending the litigation financing agreement to comply with the
295 disclosure obligations established herein.

296 (b) Obtains information on the involvement of a foreign
297 person, foreign principal, or sovereign wealth fund after the
298 commencement of such action, claim, or proceeding, which
299 involvement would require disclosure under this section, the
300 party or attorney has 30 days after the date of obtaining the
301 information to comply with the disclosure obligations
302 established herein.

303 69.109 Indemnification by litigation financiers.—In any
304 litigation financing agreement, the litigation financier must
305 agree to indemnify the plaintiffs to the civil action,
306 administrative proceeding, claim, or other legal proceeding
307 funded in the agreement and such plaintiffs' counsel of record
308 against any adverse costs, attorney fees, damages, or sanctions
309 that may be ordered or awarded against such persons in such
310 action, claim, or proceeding. However, indemnification is not
311 required for those adverse costs, attorney fees, damages, or
312 sanctions that the litigation financier can show resulted from
313 the intentional misconduct of such plaintiffs or plaintiffs'
314 counsel of record.

315 69.111 Violations; enforcement.—

316 (1) A litigation financing agreement executed in violation
317 of this part is void and unenforceable.

318 (2) A violation of s. 69.105 or s. 69.109 is a deceptive
319 and unfair trade practice actionable under part II of chapter

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321 (3) A court, agency, or tribunal of competent jurisdiction
322 may impose fines or any other sanction it deems appropriate upon
323 any person who violates s. 69.107.

324 Section 4. If any provision of this act or its application
325 to any person or circumstance is held invalid, the invalidity
326 does not affect other provisions or applications of the act
327 which can be given effect without the invalid provision or
328 application, and to this end the provisions of this act are
329 severable.

330 Section 5. The disclosure requirements in s. 69.107,
331 Florida Statutes, as created by this act apply to any civil
332 action, administrative proceeding, claim, or other legal
333 proceeding pending or commenced on or after July 1, 2024. Any
334 party to or counsel of record for a civil action, administrative
335 proceeding, claim, or other legal proceeding pending on July 1,
336 2024, who would have been required to make a disclosure under s.
337 69.107, Florida Statutes, had it been in effect at the time the
338 relevant action occurred must make the disclosure under that
339 section within 30 days after July 1, 2024. Failure to do so is
340 sanctionable as provided in s. 69.111, Florida Statutes.

341 Section 6. Except as otherwise provided herein, this act
342 applies to a litigation financing agreement entered into on or
343 after July 1, 2024.

344 Section 7. This act shall take effect July 1, 2024.