A bill to be entitled

An act relating to litigation financing consumer protection; creating part VIII of ch. 501, F.S., entitled "Litigation Financing Consumer Protection Act"; creating s. 501.1001, F.S.; providing definitions; creating s. 501.1002, F.S.; requiring litigation financiers to register with the Department of State before engaging in litigation financing; providing registration requirements; requiring litigation financiers to file a surety bond meeting specified requirements; requiring the department serve notice to such financiers and to revoke such registrations for certain noncompliance; authorizing the department to adopt rules; creating s. 501.1003, F.S.; providing requirements for litigation financing contracts; creating s. 501.1004, F.S.; prohibiting litigation financiers from engaging in specified conduct; creating s. 501.1005, F.S.; providing disclosure requirements for litigation financing contracts; creating s. 501.1006, F.S.; authorizing litigation financiers to assess specified interest, fees, and charges; providing requirements for such interest, fees, and charges; prohibiting a litigation financier from assessing specified fees or charges; creating s. 501.1007, F.S.; providing that specified communications between attorneys and litigation financiers do not effect statutory or common-law privilege; creating s. 501.1008, F.S.; providing that violations of the act are deceptive and unfair trade practices; providing construction; providing an effective date.

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

Section 1. Part VIII of chapter 501, Florida Statutes, consisting of sections 501.1001, 501.1002, 501.1003, 501.1004, 501.1005, 501.1006, 501.1007, and 501.1008, Florida Statutes, is created and entitled "Litigation Financing Consumer Protection Act."

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

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

(1) "Consumer" means any individual.

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

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

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

(5) "Interest" means the cost of obtaining litigation financing and includes any profit or advantage of any kind

whatsoever that a litigation financier may charge, contract for, collect, receive, or in any way obtain as a condition for a litigation financing contract. Charges and fees specifically authorized by this part are not interest.

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

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

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

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

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

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

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

(8) "Net proceeds" means the portion of the proceeds of a civil action or claim remaining after satisfaction of all liens with a higher priority than that of the litigation financier as

specified in s. 501.1006(2).

Section 3. Section 501.1002, Florida Statutes, is created to read:

501.1002 Litigation financier registration; registration revocation.—

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

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

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

2. A status of active and in good standing as reflected in department records; and

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

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

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

2. Filed a litigation financier registration application with the department on a form prescribed by the department

containing, at a minimum:

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

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

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

d. Any other information the department deems necessary.

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

(a) Issued by a surety company authorized to do business in the state.

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

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

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

(4) If the department determines that a litigation

financier has not complied with the requirements of this section, the department shall serve the litigation financier notice in a record of its intent to revoke the registration of the litigation financier. Such notice:

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

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

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

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

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

501.1003 Litigation financing contracts; terms.—The litigation financing terms must be set forth in a written contract containing:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

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

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

Section 5. Section 501.1004, Florida Statutes, is created to read:

501.1004 Prohibited conduct.—A litigation financier may not:

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

(2) Accept a commission, referral fee, rebate, or other consideration from any person, including an attorney, law firm,

or health care practitioner;

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

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

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

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

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

(8) Offer or provide legal advice to the consumer regarding the litigation financing contract or the subject civil action or claim;

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

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

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

501.1005 Required disclosures.—

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

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

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

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

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

(e) The interest rate;

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

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

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

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

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

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

DO NOT SIGN THIS CONTRACT BEFORE READING IT COMPLETELY OR IF THE CONTRACT CONTAINS ANY INCOMPLETE OR BLANK SECTIONS. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD

CONSULT AN ATTORNEY. YOU MAY ALSO WANT TO CONSULT A TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN ACCOUNTANT.

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

501.1006 Interest, fees, charges, and penalties.—

(1) A litigation financier may not directly or indirectly charge, contract for, or receive an interest rate of greater than 25 percent of the funded amount per annum. In determining compliance with the statutory maximum interest rate, the computations used must be simple interest and not add-on interest or any other computations.

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

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

for which interest accrued.

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

501.1007 Effect of communication on privilege.—Communication between a consumer's attorney and a litigation financier regarding a litigation financing contract does not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work-product doctrine and the attorney-client privilege.

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

501.1008 Violation; enforcement.—

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

(2) This section does not limit the:

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

(b) Rights and remedies available to the state or a person under any other law.

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