

**Introduced by Senator Caballero**February 15, 2023

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An act to add Title 1.6C.18 (commencing with Section 1788.310) to Part 4 of Division 3 of the Civil Code, relating to litigation financing.

## LEGISLATIVE COUNSEL'S DIGEST

SB 581, as introduced, Caballero. Third-party litigation financing.

Under existing law, the Secretary of State is charged with various duties in connection with business filings. Existing law also specifies procedures for a person, whether represented by an attorney or self-represented, to file a civil action in superior court. Existing law specifies additional procedures for an action to proceed through trial and judgment, or to resolve by settlement before trial.

This bill would prohibit a litigation financier, as defined, from engaging in a litigation financing transaction in California unless it is registered with the Secretary of State in accordance with certain procedures, including filing an application and surety bond. The bill would prohibit a litigation financier from taking certain actions, including paying or offering commissions, referral fees, or other forms of consideration to a legal representative, medical provider, or any of their employees for a referral to that financier, or making false or misleading statements.

This bill would require the terms of a litigation financing agreement to be set forth in a written contract, in a specified format, with disclosures regarding the consumer's right to cancellation, the fees charged, and other related information. With respect to consumer fees, the bill would prohibit a litigation financier from charging the consumer an annual fee of more than 36% of the original amount of money

provided to the consumer for the litigation financing transaction, subject to other terms and conditions.

This bill would require a consumer or their legal representative to provide a litigation financing contract or agreement to all parties to the litigation, without awaiting a discovery request, except as specified. The bill would specify that the existence of litigation financing, litigation financing transactions, and participants in those financing arrangements are permissible subjects of discovery in a civil case. The bill would apply the above procedures to class actions, and would require the legal representative of the putative class to disclose to all parties, putative class members, and the court, any legal, financial, or other relationship between the legal representative and the litigation financier.

This bill would make a litigation financier jointly liable for costs assessed pursuant to these provisions, as specified. The bill would also provide that a violation of these provisions would make the litigation financing contract unenforceable by the litigation financier, the consumer, or any successor-in-interest to the litigation financing contract. The bill would require the practice of litigation financing to be regulated by the Secretary of State and would require the Secretary to adopt regulations pursuant to these provisions.

This bill would require each litigation financier to file an annual report with the Secretary of State in accordance with certain procedures, containing specific information about the business structure of the litigation financier, transactions, and other related information. The bill would require the Secretary of State to submit an annual confidential report to the Legislature on this information, as prescribed.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Title 1.6C.18 (commencing with Section  
2 1788.310) is added to Part 4 of Division 3 of the Civil Code, to  
3 read:

1 TITLE 1.6C.18. THIRD PARTY LITIGATION FINANCING  
2 CONSUMER PROTECTION ACT  
3

4 1788.310. This title shall be known, and may be cited, as the  
5 Third Party Litigation Financing Consumer Protection Act.

6 1788.311. As used in this title, the following definitions apply:

7 (a) “Consumer” means any person or entity residing or  
8 domiciled in this state with a civil claim or action in this state or  
9 any legal representative of that person or entity.

10 (b) “Legal representative” means an attorney, group of attorneys,  
11 or law firm who may be entitled to represent a person or persons  
12 in a legal dispute in this state.

13 (c) “Litigation financier” means a person, group of persons, or  
14 legal entity, engaged in the business of litigation financing or any  
15 other economic activity intended to facilitate litigation financing.

16 (d) “Litigation financing” means the funding of a civil claim or  
17 action by anyone other than the parties to the claim or action  
18 themselves, their counsel, or entities with a preexisting contractual  
19 indemnitor or a liability insurer relationship with one of the parties.  
20 Litigation financing includes, but is not limited to, the purchase  
21 of bills, accounts or liens or otherwise paying for or purchasing  
22 services rendered related to a claim or action.

23 (e) (1) “Litigation financing transaction” means a transaction  
24 in which litigation financing is provided to a consumer, legal  
25 representative, or medical provider in return for assigning to the  
26 litigation financier a contingent right to receive an amount out of  
27 the proceeds of any realized judgment, award, settlement, or verdict  
28 the consumer may receive on the underlying claim or action, or  
29 agreeing to pay the litigation financier interest, fees, or other  
30 consideration for the financing provided.

31 (2) The term “litigation financing transaction” does not include  
32 legal representation services provided to a consumer by a legal  
33 representative on a contingency fee basis, or legal costs advanced  
34 by a legal representative, where those services or costs are provided  
35 to or on behalf of a consumer by a legal representative in the  
36 dispute and in accordance with the Rules of Professional Conduct  
37 of the State Bar of California.

38 (f) “Medical provider” means any person or business providing  
39 medical services of any kind to a consumer, including, but not  
40 limited to, physicians, nurse practitioners, hospitals, physical

1 therapists, chiropractors, or radiologists, and any of their  
2 employees, contractors, practice groups, partnerships or  
3 incorporations.

4 1788.312. (a) (1) A litigation financier shall not engage in a  
5 litigation financing transaction in this state unless it is registered  
6 with the Secretary of State as a litigation financier in this state.

7 (2) A litigation financier that is a business entity or partnership  
8 may be registered in this state if both:

9 (A) It has a status of active and is in good standing as reflected  
10 in the records of the Secretary of State.

11 (B) Its charter, articles of organization, certificate of limited  
12 partnership, or other organizational document, or, if a foreign  
13 entity, its application for a certificate of authority with the Secretary  
14 of State contains a statement that it shall be designated as a  
15 litigation financier pursuant to this title.

16 (3) A litigation financier that is not a business entity or  
17 partnership may be registered in this state if that litigation financier  
18 files an application for registration as a litigation financier on a  
19 form prescribed by the Secretary of State, along with a filing fee  
20 of one hundred dollars (\$100), that contains all of the following:

21 (A) The applicant's full legal name.

22 (B) The business name of applicant, if any.

23 (C) The physical street address and mailing address of the  
24 applicant.

25 (D) A telephone number through which the applicant can be  
26 reached.

27 (E) The name, physical street address, mailing address, and  
28 telephone number for a registered agent in this state who is  
29 appointed to accept service of process on behalf of the applicant.

30 (F) A statement that the applicant shall be designated as a  
31 litigation financier pursuant to this title.

32 (G) Any other relevant information the Secretary of State deems  
33 necessary to process the application.

34 (b) Each litigation financier shall file with the Secretary of State  
35 a surety bond of not less than fifty thousand dollars (\$50,000). The  
36 bond shall be payable to the state. Upon appropriation by the  
37 Legislature, the state may use funds from the bond to reimburse  
38 the Attorney General for costs incurred in enforcing a violation of  
39 this title. The bond shall continue in effect so long as a litigation

1 financier is designated as a litigation financier in the records of the  
2 secretary of state.

3 (c) A litigation financier shall amend its registration with the  
4 Secretary of State under subdivision (a) within 30 days whenever  
5 the information contained in the litigation financier's record changes  
6 or becomes inaccurate or incomplete in any respect. A litigation  
7 financier that is not a business entity or partnership may amend its  
8 registration with the Secretary of State by filing an amendment on  
9 a form prescribed by the Secretary of State, along with a filing fee  
10 of twenty dollars (\$20.00).

11 (d) All documents filed pursuant to this section are public  
12 records under the California Public Records Act (Division 10  
13 commencing with Section 7920.000) of Title 1 of the Government  
14 Code).

15 1788.313. (a) A litigation financier shall not do any of the  
16 following:

17 (1) Pay or offer commissions, referral fees, or other forms of  
18 consideration to any legal representative, medical provider, or any  
19 of their employees for referring a consumer to a litigation financier.

20 (2) Accept any commissions, referral fees, rebates, or other  
21 forms of consideration from a legal representative, medical  
22 provider, or any of their employees.

23 (3) Advertise false or misleading information regarding its  
24 products or services.

25 (4) Refer a consumer or potential consumer to a specific legal  
26 representative, medical provider, or any of their employees.

27 (5) Fail to promptly supply copies of any complete litigation  
28 financing contracts to the consumer and the consumer's legal  
29 representative.

30 (6) Attempt to secure a remedy or obtain a waiver of any  
31 remedy, including, but not limited to, compensatory, statutory, or  
32 punitive damages, that the consumer might otherwise be or not be  
33 entitled to pursue.

34 (7) Offer or provide legal advice to the consumer regarding the  
35 litigation financing or the underlying dispute.

36 (8) Assign, which includes securitizing, a litigation financing  
37 contract in whole or part.

38 (9) Report a consumer to a credit reporting agency if insufficient  
39 funds remain from the net proceeds to repay the litigation financier.

1 (10) Receive or exercise any right to direct, control, or otherwise  
2 influence the conduct of the consumer's legal claim or action,  
3 including, but not limited to, any settlement or resolution thereof.  
4 The right to make any decision relating to the claim or action shall  
5 remain solely with the consumer and their legal representative.

6 (b) A legal representative retained by a consumer, or a medical  
7 provider for a consumer, or any of their employees shall not have  
8 a financial interest in litigation financing and shall not receive a  
9 referral fee or other consideration from any litigation financier, its  
10 employees, owners, or its affiliates.

11 1788.314. (a) The terms of the litigation financing agreement  
12 shall be set forth in a written contract that is completely filled in.  
13 There shall be no incomplete sections when the contract is offered  
14 or presented to the consumer, legal representative, or medical  
15 provider.

16 (b) A litigation financing contract shall contain all of the  
17 disclosures specified in this section, which shall constitute material  
18 terms of the litigation financing contract.

19 (c) These disclosures shall be typed in at least 14-point, bold  
20 font and be placed clearly and conspicuously immediately above  
21 the consumer's signature line in the litigation financing contract:

22 (1) Consumer's Right to Cancellation: You may cancel this  
23 contract without penalty or further obligation within five business  
24 days from the date you signed this contract or received financing  
25 from [insert name of the litigation financier] by either returning the  
26 funds to [insert name, office address and office hours of the  
27 litigation financier] or by U.S. mail, [insert name and mailing  
28 address of litigation financier]. For return by U.S. mail, the  
29 postmark date on the returned funds or, if mailed by registered or  
30 certified mail, the date of the return receipt requested shall be the  
31 date of return.

32 (2) The fees charged pursuant to this agreement shall not exceed  
33 [litigation financier to insert annual interest percentage rate,  
34 percentage of award or settlement proceeds, or dollar amount.]

35 (3) The litigation financier agrees that it has no right to and will  
36 not make any decisions about the conduct of your lawsuit or dispute  
37 and that the right to make those decisions remains solely with you  
38 and your legal representative.

39 (4) If there is no recovery of any money from your legal claim  
40 or if there is not enough money to satisfy the portion assigned to

1 [insert name of the litigation financier] in full, you will not owe  
2 anything in excess of your recovery.

3 (5) Do not sign this contract before you read it completely. If  
4 this contract contains any incomplete sections, you are entitled to  
5 a completely filled-in copy of the contract prior to signing it. Before  
6 you sign this contract, you should obtain the advice of an attorney.  
7 Depending on the circumstances you may want to consult a tax  
8 advisor, a financial professional or an accountant.

9 (d) If the consumer is represented by a legal representative in  
10 the dispute that is the subject of the litigation financing contract,  
11 the legal representative shall acknowledge in the contract that they  
12 or their employer or employees have neither received nor paid a  
13 referral fee or any other consideration from or to the litigation  
14 financier, nor will in the future do so.

15 (e) If the consumer's legal representative is a party to a litigation  
16 financing agreement related to the consumer's legal proceeding,  
17 the legal representative shall share with the consumer the agreement  
18 between the legal representative and the litigation financier. The  
19 agreement shall be accompanied by the disclosures required by  
20 this section, and the consumer shall sign both an acknowledgment  
21 that the agreement has been read and the required disclosure.

22 1788.315. (a) Notwithstanding any law, a litigation financier  
23 may charge the consumer an annual fee not to exceed 36 percent  
24 of the original amount of money provided to the consumer for the  
25 litigation financing transaction.

26 (b) A litigation financier shall not charge a consumer the annual  
27 fee authorized by subdivision (a) more than one time each year  
28 with regard to any single legal claim regardless of the number of  
29 litigation financing transactions that the litigation financier enters  
30 into with the consumer with respect to that legal claim.

31 (c) Fees assessed by a litigation financier may compound  
32 semiannually but shall not compound based on any lesser time  
33 period.

34 (d) In calculating the annual percentage fee or rate of return, a  
35 litigation financier shall include all charges payable directly or  
36 indirectly by the consumer, and shall compute the rate based only  
37 on amounts actually received and retained by the consumer.

38 (e) A litigation financier shall not assess fees for any period  
39 exceeding 42 months from the date of the contract with the  
40 consumer.

1 (f) A litigation financier shall not enter into an agreement with  
2 a consumer that has the effect of incorporating the consumer's  
3 obligations to the litigation financier that are contained in the  
4 original litigation financing transaction into a subsequent litigation  
5 financing transaction.

6 (g) A litigation financier shall not knowingly provide financing  
7 to a consumer who has previously assigned or sold a portion of  
8 the consumer's right to proceeds from their legal claim without  
9 first making payment to or purchasing a prior unsatisfied litigation  
10 financier's entire funded amount and contracted charges unless a  
11 lesser amount is otherwise expressly agreed to in writing by the  
12 litigation financiers; except multiple litigation financiers may agree  
13 to contemporaneously provide financing to a consumer, if the  
14 consumer and the consumer's attorney consent to the agreement  
15 in writing.

16 1788.316. (a) Except as otherwise stipulated or ordered by the  
17 court, a consumer or their legal representative shall, without  
18 awaiting a discovery request, provide to all parties to the litigation,  
19 including their insurer, if, prior to litigation, any litigation financing  
20 contract or agreement under which anyone, other than a legal  
21 representative permitted to charge a contingent fee representing a  
22 party, has received or has a right to receive compensation or  
23 proceeds from the consumer that are contingent on and sourced  
24 from any proceeds of the civil action, by settlement, judgment, or  
25 otherwise.

26 (b) The existence of litigation financing, litigation financing  
27 transactions, and all participants in those financing arrangements  
28 are permissible subjects of discovery in any civil case, including  
29 personal injury litigation or matters arising out of personal injuries.

30 1788.317. (a) Each litigation financier shall file a report  
31 annually with the Secretary of State in accordance with procedures  
32 established by the Secretary of State pursuant to this title. The  
33 report shall contain, but is not limited to, all of the following:

34 (1) For each person that, directly or indirectly, owns, controls,  
35 holds with the power to vote, or holds proxies representing, 5  
36 percent or more of the voting securities of the litigation financier:

37 (A) The legal name and address of each person.

38 (B) If the person is an individual, their principal occupation and  
39 offices and positions held during the past five years, and any

1 conviction of crimes other than minor traffic violations during the  
2 past 10 years.

3 (C) If the person is not an individual, a report of the nature of  
4 the entity's business operations during the past five years or for  
5 the lesser period as the person and any predecessors that have been  
6 in existence; a narrative description of the business intended to be  
7 done by the person and the person's subsidiaries; and a list of all  
8 individuals who are or who have been selected to become directors  
9 or executive officers of the person. The list shall include for each  
10 individual the information required by paragraph (2) of this  
11 subdivision.

12 (2) For each litigation financing transaction entered in this state  
13 or involving a claim to be litigated in this state, the litigation  
14 financier shall identify all of the following:

15 (A) The amount, dates of any payments, and name and address  
16 of each person that received any amount of financing from a  
17 litigation financier during the previous calendar year.

18 (B) The amount, dates of any payment, and source of payment  
19 for all proceeds obtained by the litigation financier during the  
20 previous calendar year from any judgment, award, settlement, or  
21 verdict in a litigation financing transaction.

22 (C) Any other information the Secretary of State deems  
23 reasonably necessary to administer its duties under this title.

24 (b) (1) The Secretary of State shall submit an annual report to  
25 the Legislature regarding the information received pursuant to  
26 subdivision (a). The report shall contain all of the information set  
27 forth in subdivision (a), including a summary of the information.  
28 The date and records shall be kept confidential. This report as filed  
29 shall not be made available to the public and shall be confidential  
30 by law and privileged, shall not be subject to disclosure under the  
31 California Public Records Act (Division 10 (commencing with  
32 Section 7920.000) of Title 1 of the Government Code) or any other  
33 public records act, and shall not be subject to discovery or  
34 admissible in evidence in any private civil action.

35 (2) The Secretary of State shall release the report and summary  
36 under paragraph (1) of subdivision (b) to the public, subject to the  
37 removal or redaction of all personally identifiable, confidential  
38 information of any consumer. This subdivision shall not affect the  
39 obligation to disclose litigation financing contracts or other  
40 agreements under this title.

1 1788.318. This title shall apply to any action filed or certified  
2 as a class action. In addition to the disclosure requirements set  
3 forth in Section 1788.316, the legal representative of the putative  
4 class shall disclose to all parties, putative class members, and the  
5 court any legal, financial, or other relationship between the legal  
6 representative and the litigation financier.

7 1788.319. A litigation financier is jointly liable for costs  
8 assessed pursuant to this title or any monetary sanction imposed  
9 pursuant to title, on the consumer whose claim or action the  
10 litigation financier is funding pursuant to a litigation financing  
11 transaction.

12 1788.320. The practice of litigation financing shall be regulated  
13 by the Secretary of State. The Secretary of State shall adopt  
14 regulations consistent with this title and its authority under law.

15 1788.321. Any violation of this title shall make the litigation  
16 financing contract unenforceable by the litigation financier, the  
17 consumer, or any successor-in-interest to the litigation financing  
18 contract.

19 1788.322. The provisions of this title are severable. If any  
20 provision of this title or its application is held invalid, that  
21 invalidity shall not affect other provisions or applications that can  
22 be given effect without the invalid provision or application.

23 SEC. 2. The Legislature finds and declares that Section 1 of  
24 this act, which adds Title 1.6C.18 (commencing with Section  
25 1788.310) to Part 4 of Division 3 of the Civil Code, imposes a  
26 limitation on the public's right of access to the meetings of public  
27 bodies or the writings of public officials and agencies within the  
28 meaning of Section 3 of Article I of the California Constitution.  
29 Pursuant to that constitutional provision, the Legislature makes  
30 the following findings to demonstrate the interest protected by this  
31 limitation and the need for protecting that interest:

32 To protect the confidential information of consumers and parties  
33 to civil actions, it is necessary for this act to limit access to that  
34 information.