

By Senator Collins

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1 A bill to be entitled
2 An act relating to litigation financing; providing a
3 short title; designating ss. 69.011-69.081, F.S., as
4 part I of ch. 69, F.S.; creating part II of ch. 69,
5 F.S., relating to litigation financing; creating s.
6 69.101, F.S.; providing definitions; creating s.
7 69.103, F.S.; requiring a court's consideration of
8 potential conflicts of interest which may arise from
9 the existence of a litigation financing agreement in
10 specified circumstances; creating s. 69.105, F.S.;
11 prohibiting specified acts by litigation financiers;
12 creating s. 69.107, F.S.; requiring certain
13 disclosures related to litigation financing agreements
14 and the involvement of foreign persons, foreign
15 principals, or sovereign wealth funds; providing for
16 discovery related to litigation financing agreements;
17 creating s. 69.109, F.S.; requiring the
18 indemnification of specified fees, costs, and
19 sanctions by a litigation financier in specified
20 circumstances; creating s. 69.111, F.S.; providing
21 that a litigation financing agreement is void in
22 specified circumstances; providing for enforcement of
23 specified violations under the Florida Deceptive and
24 Unfair Trade Practices Act; providing severability;
25 providing applicability; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. This act may be cited as the "Litigation

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30 Investment Safeguards and Transparency Act.”

31 Section 2. Sections 69.011, 69.021, 69.031, 69.041, 69.051,
32 69.061, 69.071, and 69.081, Florida Statutes, are designated as
33 part I of chapter 69, Florida Statutes, and entitled “General
34 Provisions.”

35 Section 3. Part II of chapter 69, Florida Statutes,
36 consisting of ss. 69.101, 69.103, 69.105, 69.107, 69.109, and
37 69.111, Florida Statutes, is created to read:

38
39 PART II

40 LITIGATION FINANCING

41 69.101 Definitions.—As used in this part, the term:

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

44 (a) A citizen of the United States;

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

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

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

52 (2) “Foreign principal” means:

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

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

57 (c) A partnership, association, corporation, organization,
58 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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88 provided by the attorney in accordance with the Florida Rules of
89 Professional Conduct.

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

93 (d) A health insurer that has paid, or is obligated to pay,
94 any sums for health care for an injured person under the terms
95 of a health insurance plan or agreement.

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

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

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

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

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

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

133 69.103 Litigation financing agreement; representation of
134 client interests.—A court may take the existence of a litigation
135 financing agreement into account:

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

140 (2) In actions involving a common question of law or fact
141 pending before the court which may be or have been consolidated
142 when determining whether the lead counsel or any co-lead counsel
143 would adequately and fairly represent the interests of the
144 parties to such actions.

145 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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175 the right to receive a share of the proceeds of such action,
176 claim, or proceeding pursuant to the litigation financing
177 agreement.

178 69.107 Required disclosures; discovery obligations.-

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

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

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

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

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

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

207 (3) In addition to complying with subsections (1) and (2),
208 the class counsel of a putative class in a class action lawsuit
209 for which litigation financing is obtained must disclose to the
210 following persons the existence of any legal, financial, or
211 other relationship between the class counsel and the litigation
212 financier that exists separate and apart from the litigation
213 financing agreement itself within 30 days after commencement of
214 such action or of the execution of the litigation financing
215 agreement, whichever is earlier:

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

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

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

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

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

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

235 (a) All parties to the consolidated civil actions.

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

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

241 (6) (a) A party to a civil action, administrative
242 proceeding, claim, or other legal proceeding, or such party's
243 counsel of record, must, except as otherwise stipulated to by
244 the parties to such action, claim, or proceeding, or as
245 otherwise ordered by a court of competent jurisdiction, disclose
246 as prescribed in paragraph (b) the name, address, and
247 citizenship or country of incorporation or registration of any
248 foreign person, foreign principal, or sovereign wealth fund
249 that, with respect to the action, claim, or proceeding:

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

257 2. Provided or will provide funds, whether directly or
258 indirectly, which funds have been or will be used to satisfy any
259 term of a litigation financing agreement into which the party or
260 the party's counsel of record has entered to finance such civil
261 action, administrative proceeding, claim, or other legal

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262 proceeding; or

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

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

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

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

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

280 4. The Department of Financial Services.

281 5. The Office of the Attorney General.

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

287 (8) The disclosure obligations in this section are ongoing
288 obligations. Thus, when a party to a civil action,
289 administrative proceeding, claim, or other legal proceeding, or
290 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.