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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Thurston) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Part XIII of chapter 559, Florida Statutes,
consisting of sections 559.952, 559.953, 559.954, 559.955,
559.956, 559.959, and 559.961, is created and may be cited as
the "Litigation Financing Consumer Protection Act."

Section 2. Section 559.952, Florida Statutes, is created to
read:



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

(1) “Consumer” means any individual residing, physically present, or domiciled in this state.

(2) “Funded amount” means the funds actually received by, or on behalf of, a consumer under a litigation financing contract.

(3) “Health care practitioner” has the same meaning as in s. 456.001.

(4) “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 of a litigation financing contract. Charges and fees specifically authorized by this part may not be deemed interest.

(5) “Litigation financier” means a person engaged in the business of litigation financing.

(6) “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 proceeds of his or her civil action or claim. The term does not include any of the following:

(a) Legal services provided to a consumer on a contingency fee basis or advanced legal costs, when 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) Lending or financing arrangements between an attorney or a law firm and a lending institution to fund litigation



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costs.

(d) A consumer finance loan as defined in s. 516.01.

(7) "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. 559.955(2).

Section 3. Section 559.953, Florida Statutes, is created to read:

559.953 Litigation financing contracts; terms.—The terms of a litigation financing contract must be set forth in a written contract that is completely filled in with no incomplete sections when the contract is presented to the consumer. The contract must contain all of the following:

(1) A right of rescission allowing the consumer to cancel the contract without penalty, interest, charges, fees, or further obligation if, within 5 business days after contract execution or funds receipt 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 acknowledgment of whether an attorney represents him or her in the civil action or claim that is the subject of the contract.

(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.

(4) The consumer's initials on each page of the contract



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and the signature of the consumer on the executed contract.

Section 4. Section 559.954, Florida Statutes, is created to read:

559.954 Prohibited acts.—A litigation financier may not:

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

(2) Accept a commission, a referral fee, a rebate, or other consideration from any person, including an attorney, a law firm, or a 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 supply a copy of an executed litigation financing contract to the consumer upon execution of a contract.

(6) Attempt to obtain a waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages, which 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.



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

(10) Report to a consumer credit reporting agency if insufficient funds remain from the net proceeds of the subject civil action or claim to repay the litigation financier.

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

(12) Enter into a litigation financing contract with a consumer incorporating the consumer's obligations to the litigation financier under an existing litigation financing contract.

(13) Knowingly enter into a litigation financing contract with a consumer already under a litigation financing contract with another litigation financier without first paying the entire funded amount and all charges owed under the existing contract, unless the consumer consents to a contemporaneous financing arrangement in writing.

(14) Provide litigation financing for a claim under chapter 440.

Section 5. Section 559.955, Florida Statutes, is created to read:

559.955 Required disclosures.—

(1) A litigation financing contract must contain all of 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 copy of the fully executed contract upon execution of the contract.

(b) A statement that the litigation financier has no right



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to and will not make any decisions or attempt to influence the consumer or his or her attorney about the conduct of the civil action or claim subject to 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 charges and fees 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 charges, fees, and interest.

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

(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.

(i) Notice that if the consumer recovers nothing from the subject civil action or claim, he or she will owe the litigation financier nothing.

(j) Notice that if the net proceeds of the subject civil action or claim are insufficient to fully repay the litigation financier, the litigation financier will accept a reduced sum as full payment of the funded amount and all charges, fees, and interest owed, which sum may not exceed the net proceeds less proceeds specifically awarded for future medical expenses.

(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:



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CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY, INTEREST, CHARGES, FEES, OR FURTHER OBLIGATION WITHIN 5 BUSINESS DAYS FROM THE DATE OF CONTRACT EXECUTION OR RECEIVING 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 ADVISOR, OR AN ACCOUNTANT.

Section 6. Section 559.956, Florida Statutes, is created to read:

559.956 Contingent right to proceeds assignable; priority of lien or right to proceeds.—

(1) A consumer may assign his or her contingent right to an amount of the potential proceeds of a civil action or claim.

(2) A litigation financier's lien on the potential proceeds of a civil action or claim has priority over liens that attach to such proceeds subsequent to the attachment of the litigation



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financier's lien, except for any of the following:

(a) Attorney, insurer, or health care practitioner liens or liens based upon subrogation interests or reimbursement rights related to the subject civil action or claim.

(b) Child support, Medicare, tax, or any other statutory or governmental lien.

Section 7. Section 559.959, Florida Statutes, is created to read:

559.959 Effect of communication on privilege.—
Communications between a consumer's attorney and a litigation financier as it pertains to a litigation financing contract do 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 8. Section 559.961, Florida Statutes, is created to read:

559.961 Violation; enforcement.—
(1) A violation of this part is an unfair or deceptive trade act or practice under part II of chapter 501.
(2) A litigation financing transaction that does not comply with the provisions of this part is void and unenforceable, and the litigation financier has no right to collect, receive, or retain any principal, interest, or charges relating to such transaction.

Section 9. This act shall take effect July 1, 2020.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause



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and insert:

A bill to be entitled
An act relating to litigation financing consumer
protection; creating the Litigation Financing Consumer
Protection Act; creating s. 559.952, F.S.; defining
terms; creating s. 559.953, F.S.; specifying mandatory
litigation financing contract terms; creating s.
559.954, F.S.; prohibiting litigation financiers from
engaging in specified conduct; creating s. 559.955,
F.S.; requiring specified mandatory litigation
financing contract disclosures; creating s. 559.956,
F.S.; authorizing a consumer to assign his or her
contingent right to proceeds from a civil action or
claim; establishing the priority of liens against or
rights to civil action or claim proceeds; creating s.
559.959 , F.S.; providing that specified
communications between attorneys and litigation
financiers do not limit or waive statutory or common-
law privilege; creating s. 559.961, F.S.; providing
that a violation of this part is a violation of the
Florida Deceptive and Unfair Trade Practices Act;
providing that a contract that does not comply with
the provisions of this part is void and unenforceable;
providing an effective date.