

2023 Regular Session

SENATE BILL NO. 196

BY SENATOR PEACOCK

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CONTRACTS. Creates the Litigation Financing Disclosure and Security Protection Act.
(8/1/23)

1 AN ACT

2 To enact Chapter 2-C of Title 12 of the Louisiana Revised Statutes of 1950, to be comprised

3 of R.S. 9:3580.1 through R.S. 9:3580.6, relative to litigation disclosure; to provide

4 relative to financial disclosure; to provide relative to the creation of the Litigation

5 Financing Disclosure and Security Protection Act; to provide for definitions, terms,

6 and conditions; to provide for discovery; to provide for contract disclosures; to

7 provide with respect to class action lawsuits; to provide for solidary liability; to

8 provide for violations and contracts; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 2-C of Title 12 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 9:3580.1 through R.S. 9:3580.6, is hereby enacted to read as follows:

12 **CHAPTER 2-C. LITIGATION FINANCING**

13 **DISCLOSURE AND SECURITY PROTECTION**

14 **§3580.1. Short title**

15 **This Chapter shall be known and may be cited as the "Litigation**
16 **Financing Disclosure and Security Protection Act".**

17 **Purpose. The purpose of this Act is to maintain integrity and establish**

1 transparency in our civil justice system. The use of third party litigation
2 funding in lawsuits is becoming more prevalent in our judicial system. The
3 United States maintains one of the largest third party litigation funding markets
4 in the world. Investments are being made by foreign hedge funds, private equity
5 funds, and in some cases, sovereign wealth funds connected to hostile
6 governments. These nonparty participants have an impact on the speed and
7 manner of resolution of a lawsuit. The entrance of both foreign and domestic
8 actors in third party litigation funding has the potential to encourage frivolous
9 lawsuits, prolong settlement efforts, and harm the sanctity of the client-attorney
10 relationship, all with the intended goal of overwhelming our courts, weakening
11 critical industries, and draining the resources of both private and corporate
12 citizens. The use of third party litigation financing by agents of hostile
13 governments can threaten the integrity of our national security by providing
14 access to technological competitive information, trade secrets, and other
15 confidential information.

16 To guard against these threats, while maintaining legitimate access to
17 third party litigation funding, it is imperative that parties seeking to avail
18 themselves of third party litigation funding disclosures, pursuant to the
19 requirements of this Act, when such financing is used to support litigation.

20 §3580.2. Definitions

21 For the purpose of this Chapter, the following terms have the meanings
22 ascribed to them in this Section, unless a different meaning clearly appears
23 from the context:

24 (1) "Legal representative" means an attorney, group of attorneys, or law
25 firm who may be entitled to represent a person or persons in a legal dispute in
26 this state.

27 (2) "Litigation financier" means a person, group of persons, or legal
28 entity, engaged in the business of litigation financing or any other economic
29 activity intended to facilitate litigation financing.

1 **(3)(a) "Litigation financing" means the financing, funding, advancing,**
2 **or loaning of money to pay for fees, costs, expenses, or has agreed to pay**
3 **expenses directly related to the prosecuting the legal claim, administrative**
4 **proceeding, claim, or cause of action, if the financing, funding, advancing, or**
5 **loaning of money is provided by any person other than a person who is any of**
6 **the following:**

7 **(i) A party to the civil action, administrative proceeding, claim, or cause**
8 **of action.**

9 **(ii) A legal representative engaged, directly or indirectly through another**
10 **legal representative, to represent a party in the civil action, administrative**
11 **proceeding, claim, or cause of action.**

12 **(iii) An entity or insurer with a preexisting contractual obligation to**
13 **indemnify or defend a party to the civil action, administrative proceeding,**
14 **claim, or cause of action.**

15 **(b) Funds provided directly to a party solely for personal needs shall not**
16 **be considered litigation financing provided such funds are provided exclusively**
17 **for personal and family use and not for legal filings, legal document preparation**
18 **and drafting, appeals, creation of a litigation strategy, drafting testimony, and**
19 **related litigation expenses.**

20 **(4) "Litigation financing contract or agreement" means a transaction in**
21 **which litigation financing is provided to a party or legal representative in return**
22 **for assigning to the litigation financier a contingent right to receive an amount**
23 **including payment of interest, fees or any other consideration for the financing**
24 **provided out of the proceeds of any realized judgment, award, settlement, or**
25 **verdict the party may receive on the underlying claim or action. The term**
26 **"litigation financing contract or agreement" does not include:**

27 **(a) Legal representation services provided to a party by a legal**
28 **representative on a contingency fee basis, or legal costs advanced by a legal**
29 **representative when such services or costs are provided to or on behalf of a**

1 party by a legal representative in the dispute and in accordance with the
2 Louisiana Rules of Professional Conduct.

3 (b) The bills, receivables, or liens held by a medical provider or their
4 assignee.

5 (c) Secured or unsecured loans made directly to a party or legal
6 representative when repayment of the loan is not contingent upon the judgment,
7 award, settlement, or verdict in a claim or action.

8 (5) "National security" interests are those interests that encompass the
9 national defense, foreign intelligence and counterintelligence, international and
10 internal security, and foreign relations.

11 (6) "Party" means any person or entity or any legal representative of
12 such person or entity.

13 (7) "Proprietary information" shall mean information developed,
14 created, or discovered by an entity, or which became known by, or was
15 conveyed to the entity, which has commercial value in the entity's business.
16 "Proprietary information" shall include but not be limited to domain names,
17 trade secrets, copyrights, ideas, techniques, inventions whether patentable or
18 not, and any other information of any type relating to designs, configurations,
19 documentation, recorded data, schematics, circuits, mask works, layouts, source
20 code, object code, master works, master databases, algorithms, flow charts,
21 formulae, works of authorship, mechanisms, research, manufacture,
22 improvements, assembly, installation, intellectual property including patents
23 and patent applications, and the information concerning the entity's actual or
24 anticipated business, research or development, or which is received in
25 confidence by or for the entity from any other person.

26 §3580.3. Disclosure of financing agreements; discovery

27 A. Except as otherwise stipulated by the parties or ordered by the court,
28 a party or his legal representative shall, without awaiting a discovery request
29 and no later than sixty days after the entry of such agreement, provide to all

1 parties to the litigation, including their insurer if prior to litigation, any
2 litigation financing contract or agreement under which anyone, other than a
3 legal representative permitted to charge a contingent fee representing a party,
4 has received or has a right to receive compensation or proceeds that are
5 contingent on and sourced from any proceeds of the civil action, by settlement,
6 judgment, or otherwise.

7 B. Except as otherwise stipulated by the parties or ordered by the court,
8 a party or his legal representative shall, without awaiting a discovery request
9 and no later than sixty days after the entry of such agreement, provide to all
10 parties to the litigation, including their insurer if prior to litigation, any
11 litigation financing contract or other agreement, under which anyone other than
12 the party's legal representative permitted to charge a contingent fee
13 representing a party, has received or is entitled to receive, proprietary
14 information or information affecting national defense or security, obtained as
15 a result of the litigation.

16 C. The existence of litigation financing, litigation financing contract or
17 agreement, and all participants in such financing arrangements are permissible
18 subjects of discovery in all civil cases, including personal injury litigation or
19 matters arising out of personal injuries.

20 D. This Chapter shall not apply to nonprofit legal organizations funded
21 by private donors that represent clients on a pro bono, no-cost basis provided
22 that the nonprofit legal organization seeks only injunctive relief on behalf of its
23 clients. Awards of costs or attorney fees to nonprofit legal organizations shall
24 not be affected by this Chapter. This Chapter shall not be interpreted to require
25 a nonprofit legal organization to disclose its donors or sources of funding.

26 §3580.4. Class action lawsuits

27 This Chapter shall apply to any action filed or certified as a class action.
28 In addition to the disclosure requirements set forth in R.S. 9:3580.3, the legal
29 representative of the putative class shall disclose to all parties, putative class

1 members, and the court, any legal, financial, or other relationship between the
 2 legal representative and the litigation financier.

3 §3580.5. Solidary liability

4 A litigation financier is solidarily liable for costs assessed by the court
 5 relative to the payment of any monetary sanction imposed pursuant to the
 6 Louisiana Code of Civil Procedure on the party whose claim or action the
 7 litigation financier is funding pursuant to a litigation financing transaction.

8 §3580.6. Violation; unenforceable contract

9 Any violation of this Chapter shall make the litigation financing contract
 10 unenforceable by the litigation financier, the party, or any successor-in-interest
 11 to the litigation financing contract.

The original instrument was prepared by Lebra Bias. The following digest, which does not constitute a part of the legislative instrument, was prepared by Nicholas Davison.

DIGEST

SB 196 Reengrossed

2023 Regular Session

Peacock

Proposed law creates the Litigation Financing Disclosure and Security Protection Act.

Proposed law provides for definitions of "legal representative", "litigation financier", "litigation financing", "litigation financing contract or agreement", "national security", "party", and "proprietary information".

Proposed law provides that the party not be domiciled in this state.

Proposed law provides that except as otherwise stipulated by the parties or ordered by the court, a party or his legal representative shall provide to all litigants, including the insurer if prior to litigation, any litigation financing contract or agreement under which anyone, other than a legal representative permitted to charge a contingent fee, has received or has a right to receive compensation or proceeds that are contingent on and sourced from any proceeds of the civil action by settlement, judgement, or otherwise.

Proposed law provides that except as otherwise stipulated by the parties or ordered by the court, a party or his legal representative shall provide to all litigants, including the insurer if prior to litigation, any litigation financing contract or agreement under which anyone, other than a legal representative permitted to charge a contingent fee, has received or has a right to receive proprietary information or information affecting national defense or security obtained as a result of the litigation.

Proposed law adds provisions excluding non-profit legal organization seeks only injunctive relief on behalf of its clients from disclosure requirements. Awards of costs or attorneys' fees to non-profit legal organizations shall not be affected by proposed law. Adds provisions not stating that a non-profit legal organization will not be required to disclose its donors or sources of funding.

Proposed law provides that the existence of litigation financing, litigation financing contracts or agreements, and all participants in such financing arrangements are permissible subjects of discovery in all civil cases, including personal injury litigation or matters arising out of personal injuries.

Proposed law relative to class action suits, provides that in addition to the disclosure requirements set forth in proposed law, the legal representative of the putative class shall disclose to all parties, putative class members, and the court, any legal, financial, or other relationship between the legal representative and litigation financier.

Proposed law provides that the litigation financier is solidarily liable for costs assessed by the court relative to the payment of any monetary sanction that is imposed pursuant to present law, on the party whose claim or action is being funded pursuant to a litigation financing contract or agreement.

Proposed law provides that any violation of proposed law shall make the litigation financing contract unenforceable by the litigation financier, the consumer, or any successor-in-interest to the litigation financing contract.

Effective August 1, 2023.

(Adds R.S. 9:3580.1-3580.6)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Clarifies the definition of "litigation financing".
2. Changes the term "litigation financing transaction" to "litigation financing contract or agreement".
3. Clarifies the definition of "litigation financing contract or agreement".

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Excludes nonprofit legal organizations from disclosure requirements.
2. Removes requirement that party be residing or domiciled in this state.