

SENATE BILL NO. 196

BY SENATOR PEACOCK AND REPRESENTATIVE GAROFALO

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

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. 9:3580.5, 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 violations and contracts;
8 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. 9:3580.5, 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
18 transparency in our civil justice system. The use of third party litigation
19 funding in civil actions is becoming more prevalent in our judicial system. The
20 United States maintains one of the largest third party litigation funding markets
21 in the world. Investments are being made by foreign hedge funds, private equity
22 funds, and in some cases, sovereign wealth funds connected to hostile
23 governments. These nonparty participants have an impact on the speed and

1 manner of resolution of a lawsuit. The entrance of both foreign and domestic
2 actors in third party litigation funding has the potential to encourage frivolous
3 lawsuits, prolong settlement efforts, and harm the sanctity of the client-attorney
4 relationship, all with the intended goal of overwhelming our courts, weakening
5 critical industries, and draining the resources of both private and corporate
6 citizens. The use of third party litigation financing by agents of hostile
7 governments can threaten the integrity of our national security by providing
8 access to technological competitive information, trade secrets, and other
9 confidential information.

10 To guard against these threats, while maintaining legitimate access to
11 third party litigation funding, it is imperative that parties seeking to avail
12 themselves of third party litigation funding disclose such agreements, pursuant
13 to the requirements of this Act, when such financing is used to support
14 litigation.

15 §3580.2. Definitions

16 For the purpose of this Chapter, the following terms have the meanings
17 ascribed to them in this Section:

18 (1) "Attorney" means an attorney, group of attorneys, or law firm who
19 may be entitled to represent a person or persons in a civil action in this state.

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

23 (3)(a) "Litigation financing" means the financing, funding, advancing,
24 or loaning of money to pay for fees, costs, expenses, or an agreement to pay
25 expenses directly related to pursuing the legal claim, administrative proceeding,
26 claim, or cause of action, if the financing, funding, advancing, or loaning of
27 money is provided by any person other than a person who is any of the
28 following:

29 (i) A party to the civil action, administrative proceeding, claim, or cause
30 of action.

1 (ii) An attorney engaged, directly or indirectly through another legal
2 representative, to represent a party in the civil action, administrative
3 proceeding, claim, or cause of action.

4 (iii) An entity or insurer with a preexisting contractual obligation to
5 indemnify or defend a party to the civil action, administrative proceeding,
6 claim, or cause of action or a health insurer which has paid, or is obligated to
7 pay, any sums for health care for an injured person under the terms of any
8 health insurance plan or agreement.

9 (b) Funds provided directly to a party solely for personal needs shall not
10 be considered litigation financing provided such funds are provided exclusively
11 for personal and family use and not for legal filings, legal document preparation
12 and drafting, appeals, creation of a litigation strategy, drafting testimony, and
13 related litigation expenses.

14 (4) "Litigation financing contract or agreement" means a transaction in
15 which litigation financing is provided to a party or a party's attorney in return
16 for assigning to the litigation financier a contingent right to receive an amount
17 including payment of interest, fees or any other consideration for the financing
18 provided out of the proceeds of any realized judgment, award, settlement, or
19 verdict the party may receive on the underlying claim or action. The term
20 "litigation financing contract or agreement" does not include:

21 (a) Legal services provided to a party by an attorney on a contingency
22 fee basis, or legal costs advanced by an attorney when such services or costs are
23 provided to or on behalf of a party by an attorney in the dispute and in
24 accordance with the Louisiana Rules of Professional Conduct.

25 (b) The bills, receivables, or liens held by a healthcare provider or their
26 assignee.

27 (c) Secured or unsecured loans made directly to a party or a party's
28 attorney when repayment of the loan is not contingent upon the judgment,
29 award, settlement, or verdict in a claim or action.

30 (5) "National security" interests are those interests that encompass the

1 national defense, foreign intelligence and counterintelligence, international and
2 internal security, and foreign relations.

3 (6) "Party" means any person or entity or any attorney retained to
4 represent such person or entity in an underlying civil action.

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

18 §3580.3. Disclosure of financing agreements; discovery

19 A. Except as otherwise stipulated by the parties or ordered by the court,
20 a party or a party's attorney shall, without awaiting a discovery request and
21 upon the later of sixty days after the commencement of a civil action or sixty
22 days after execution of the litigation financing agreement, provide to all parties
23 to the civil action, including their insurer, if prior to litigation, any litigation
24 financing contract or agreement under which anyone, other than a legal
25 representative permitted to charge a contingent fee representing a party, has
26 received or has a right to receive compensation or proceeds that are contingent
27 on and sourced from any proceeds of the civil action, by settlement, judgment,
28 or otherwise. The party or the party's attorney may redact the total dollar
29 amount of litigation financing contractually agreed to between the party and the
30 litigation financier prior to the production of the litigation financing contract

1 to all other parties to the litigation.

2 B. Except as otherwise stipulated by the parties or ordered by the court,
3 a party or a party's attorney shall, without awaiting a discovery request and
4 upon the later of sixty days after the commencement of a civil action or sixty
5 days after execution of the litigation financing agreement, provide to all parties
6 to the litigation, including their insurer, if prior to litigation, any litigation
7 financing contract or other agreement under which anyone, other than the
8 party's attorney permitted to charge a contingent fee representing a party, has
9 received or is entitled to receive, proprietary information or information
10 affecting national defense or security, obtained as a result of the civil action.
11 The party or the party's attorney may redact the total dollar amount of
12 litigation financing contractually agreed to between the party and the litigation
13 financier prior to the production of the litigation financing contract to all other
14 parties to the litigation.

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

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

25 §3580.4. Class action lawsuits

26 This Chapter shall apply to any action filed or certified as a class action.
27 In addition to the disclosure requirements set forth in R.S. 9:3580.3, the
28 attorney of the putative class shall disclose to all parties, putative class
29 members, and the court, any legal, financial, or other relationship between the
30 attorney and the litigation financier.

1 §3580.5. Violation; absolute nullity of contract

2 Any litigation financing contract in violation of this Chapter shall be an

3 absolute nullity.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____