

2024 Regular Session

HOUSE BILL NO. 336

BY REPRESENTATIVE CHENEVERT

CONTRACTS: Creates the Litigation Financing Disclosure Act

1 AN ACT

2 To enact Chapter 2-C of Code Title XII of Code Book III of Title 9 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 9:3580.1 through 3580.5, relative to
4 litigation disclosure; to provide relative to financial disclosure; to provide relative
5 to the creation of the Litigation Financing Disclosure Act; to provide for definitions,
6 terms, and conditions; to provide for discovery; to provide for contract disclosures;
7 to provide with respect to class action lawsuits; to provide for violations and
8 contracts; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 2-C of Code Title XII of Code Book III of Title 9 of the
11 Louisiana Revised Statutes of 1950, comprised of R.S. 9:3580.1 through 3580.5, is hereby
12 enacted to read as follows:

13 CHAPTER 2-C. LITIGATION FINANCING DISCLOSURE

14 §3580.1. Short title

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

17 §3580.2. Definitions

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

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

1 (2) "Litigation financier" means a person, group of persons, or legal entity,
2 engaged in the business of litigation financing or any other economic activity
3 intended to facilitate litigation financing. Litigation financier does not include
4 nonprofit legal organizations.

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

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

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

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

20 (b) Funds provided directly to a party solely for personal needs shall not be
21 considered litigation financing if such funds are provided exclusively for personal
22 and family use and not for legal filings, legal document preparation and drafting,
23 appeals, creation of a litigation strategy, drafting testimony, and related litigation
24 expenses.

25 (4) "Litigation financing contract or agreement" means a transaction in
26 which litigation financing is provided to a party or a party's attorney in return for
27 assigning to the litigation financier a right to receive an amount including payment
28 of interest, fees, or any other consideration contingent in any respect on the outcome

1 of the underlying claim or action. The term "litigation financing contract or
2 agreement" does not include:

3 (a) Legal services provided to a party by an attorney on a contingency fee
4 basis or legal costs advanced by an attorney when such services or costs are provided
5 to or on behalf of a party by an attorney in the dispute and in accordance with the
6 Louisiana Rules of Professional Conduct.

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

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

12 (d) Funding provided by a nonprofit organization exempt from federal
13 income tax under Section 501(c)(3) of the United States Internal Revenue Code by
14 grant or otherwise.

15 (5) "Party" means any person or entity or any attorney retained to represent
16 such person or entity in an underlying civil action.

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

1 §3580.3. Disclosure of financing agreements; discovery

2 A.(1) 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 upon the
4 later of sixty days after the commencement of a civil action or sixty days after
5 execution of the litigation financing agreement, provide to all parties to the litigation,
6 including their insurer if prior to litigation, any litigation financing contract or
7 agreement under which anyone, other than an attorney permitted to charge a
8 contingent fee representing a party, has received or has a right to receive the
9 following:

10 (a) Compensation or proceeds that are contingent on and sourced from any
11 proceeds of the civil action, by settlement, judgment, or otherwise.

12 (b) Proprietary information obtained as a result of the civil action.

13 (2) The party or the party's attorney may redact the total dollar amount of
14 litigation financing contractually agreed to between the party and the litigation
15 financer prior to the production of the litigation financing contract to all other parties
16 to the litigation.

17 B. A litigation financer shall not decide, influence, or direct the plaintiff or
18 the plaintiff's attorney with respect to the conduct of the underlying civil proceeding
19 or any settlement or resolution of the civil proceeding, or make any decision with
20 respect to the conduct of the underlying civil proceeding or any settlement or
21 resolution of the civil proceeding. The right to make these decisions remains solely
22 with the plaintiff and the plaintiff's attorney in the civil proceeding.

23 C. The existence of litigation financing, litigation financing contracts or
24 agreements, and all participants in such financing arrangements are permissible
25 subjects of discovery in all civil actions including personal injury litigation or claims
26 arising out of personal injuries.

27 D. This Chapter shall not apply to nonprofit legal organizations funded by
28 private donors that represent clients on a pro bono basis. Awards of costs or attorney
29 fees to nonprofit legal organizations shall not be affected by this Chapter. This

1 Chapter shall not be interpreted to require a nonprofit legal organization to disclose
 2 its donors or sources of funding.

3 §3580.4. Class action lawsuits

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

8 §3580.5. Violation; absolute nullity of contract

9 Any litigation financing contract in violation of this Chapter shall be an
 10 absolute nullity.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 336 Engrossed

2024 Regular Session

Chenevert

Abstract: Establishes financial litigation disclosures.

Proposed law creates the Litigation Financing Disclosure Act.

Proposed law provides for definitions of "attorney", "litigation financier", "litigation financing", "litigation financing contract or agreement", "party", and "proprietary information".

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

Proposed law provides that a party or his attorney shall provide to all litigants, including the insurer if prior to litigation, any litigation financing contract or agreement under which anyone, other than an attorney permitted to charge a contingent fee, has received or has a right to receive either: (1) compensation or proceeds that are contingent on and sourced from any proceeds of the civil action by settlement, judgment, or otherwise; or (2) proprietary information obtained as a result of a civil action.

Proposed law adds provisions excluding application to nonprofit legal organizations seeking only injunctive relief on behalf of its clients from disclosure requirements. Awards of costs or attorney fees to non-profit legal organizations shall not be affected by proposed law. Provides that a non-profit legal organization shall 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 attorney 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 any violation of proposed law shall make the litigation financing contract absolutely null.

(Adds R.S. 9:3580.1-3580.5)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Provide exceptions for nonprofit legal organizations from disclosing their funding.
2. Provide that a "litigation financing contract" does not include funding provided by a nonprofit organization exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code by grant or otherwise.
3. Provide that proposed law shall not apply to nonprofit legal organizations funded by private donors that represent clients on a pro bono basis.