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HOUSE FLOOR AMENDMENTS

2024 Regular Session

Amendments proposed by Representative Firment to Reengrossed Senate Bill No. 355 by Senator Stine

1 AMENDMENT NO. 1

2 On page 1, line 3, after the comma "," and before "relative" insert "and to enact Chapter 2-D
3 of Code Title XII of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, to
4 be comprised of R.S. 9:3580.10 through 3580.12,"

5 AMENDMENT NO. 2

6 On page 1, line 10, after "reports;" and before "to provide relative" insert "to provide relative
7 to the creation of the Litigation Financing Disclosure Act; to provide for discovery; to
8 provide with respect to class action lawsuits;"

9 AMENDMENT NO. 3

10 On page 1, line 14, after "R.S. 9:3580.7," and before "hereby" delete "is" and insert "and
11 Chapter 2-D of Code Title XII of Code Book III of Title 9 of the Louisiana Revised Statutes
12 of 1950, comprised of R.S. 9:3580.10 through 3580.12, are"

13 AMENDMENT NO. 4

14 On page 7, between lines 23 and 24, insert the following:

15 **"CHAPTER 2-D. LITIGATION FINANCING DISCLOSURE**

16 **§3580.10. Short title**

17 **This Chapter shall be known and may be cited as the "Litigation**
18 **Financing Disclosure Act".**

19 **§3580.11. Definitions**

20 **For the purpose of this Chapter, the following terms have the meanings**
21 **ascribed to them in this Section:**

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

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

28 **(3)(a) "Litigation financing" means the financing, funding, advancing,**
29 **or lending of money to pay for fees, costs, expenses, or an agreement to pay**
30 **expenses directly related to pursuing the legal claim, administrative proceeding,**
31 **claim, or cause of action if the financing, funding, advancing, or lending of**
32 **money is provided by any person other than a person who is any of the**
33 **following:**

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

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

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

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

11 (4) "Litigation financing contract or agreement" means a transaction
 12 in which litigation financing is provided to a party or a party's attorney in
 13 return for assigning to the litigation financier a right to receive an amount
 14 including payment of interest, fees, or any other consideration contingent in any
 15 respect on the outcome of the underlying claim or action. The term "litigation
 16 financing contract or agreement" does not include:

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

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

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

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

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

31 (6) "Proprietary information" shall mean information developed,
 32 created, or discovered by a party which became known by or was conveyed to
 33 the party which has commercial value in the party's business. "Proprietary
 34 information" shall include but not be limited to domain names, trade secrets,
 35 copyrights, ideas, techniques, inventions, whether patentable or not, and any
 36 other information of any type relating to designs, configurations,
 37 documentation, recorded data, schematics, circuits, mask works, layouts, source
 38 code, object code, master works, master databases, algorithms, flow charts,
 39 formulae, works of authorship, mechanisms, research, manufacture,
 40 improvements, assembly, installation, intellectual property including patents
 41 and patent applications, and the information concerning the entity's actual or
 42 anticipated business, research or development, or which is received in
 43 confidence by or for the entity from any other source."

44 §3580.12. Disclosure of financing agreements; discovery

45 A.(1) Except as otherwise stipulated by the parties or ordered by the
 46 court, a party or a party's attorney shall without awaiting a discovery request
 47 and upon the later of sixty days after the commencement of a civil action or
 48 sixty days after execution of the litigation financing agreement, provide to all
 49 parties to the litigation, including their insurer if prior to litigation, any
 50 litigation financing contract or agreement under which anyone, other than an
 51 attorney permitted to charge a contingent fee representing a party, has received
 52 or has a right to receive the following:

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

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

56 (2) The party or the party's attorney may redact the total dollar amount
 57 of litigation financing contractually agreed to between the party and the
 58 litigation financier prior to the production of the litigation financing contract to
 59 all other parties to the litigation.

1 B. A litigation financier shall not decide, influence, or direct the party or
2 the party's attorney with respect to the conduct of the underlying civil
3 proceeding or any settlement or resolution of the civil proceeding, or make any
4 decision with respect to the conduct of the underlying civil proceeding or any
5 settlement or resolution of the civil proceeding. The right to make these
6 decisions remains solely with the party and the party's attorney in the civil
7 proceeding.

8 C. The existence of litigation financing, litigation financing contracts or
9 agreements, and all participants in such financing arrangements are permissible
10 subjects of discovery in all civil actions including personal injury litigation or
11 claims arising out of personal injuries.

12 D. This Chapter shall not apply to nonprofit legal organizations funded
13 by private donors that represent clients on a pro bono basis. Awards of costs or
14 attorney fees to nonprofit legal organizations shall not be affected by this
15 Chapter. This Chapter shall not be interpreted to require a nonprofit legal
16 organization to disclose its donors or sources of funding.

17 §3580.13. Class action lawsuits

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

23 §3580.14. Violation; absolute nullity of contract

24 Any litigation financing contract in violation of this Chapter shall be an
25 absolute nullity."