

## RÉSUMÉ DIGEST

SB 196

2023 Regular Session

Peacock

Proposed law would have created the Litigation Financing Disclosure and Security Protection Act.

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

Proposed law would have provided that the party not be domiciled in this state.

Proposed law would have provided that except as otherwise stipulated by the parties or ordered by the court, a party or his legal representative shall, without awaiting a discovery request and upon the later of sixty days after the commencement of a civil action or sixty days after execution of the litigation financing agreement, 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 would have provided that except as otherwise stipulated by the parties or ordered by the court, a party or his legal representative shall without awaiting a discovery request and upon the later of sixty days after the commencement of a civil action or sixty days after execution of the litigation financing agreement, 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 would have provided that the party or the party's attorney may redact the total dollar amount of litigation financing contractually agreed to between the party and the litigation financier prior to the production of the litigation financing contract to all other parties to the litigation.

Proposed law would have added 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 nonprofit legal organizations shall not be affected by proposed law. Provided that a nonprofit legal organization shall not be required to disclose its donors or sources of funding.

Proposed law would have provided 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 would have provided 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 would have provided that any violation of proposed law would make the litigation financing contract absolutely null.

Would have become effective August 1, 2023.

(Proposed to add R.S. 9:3580.1-3580.5)

**VETO MESSAGE:** "Please be advised that I have vetoed Senate Bill 196 of the 2023 Regular Session. This piece of legislation is clearly a pretense designed to gain a litigation advantage under the guise of promoting transparency in litigation and protecting national security.

When there is a legitimate dispute between Louisiana citizens or small businesses and their insurers, commercial legal financing levels the playing field. Legal financing allows local

companies and individuals with far fewer resources to pursue meritorious claims.

This bill would give large corporations and insurance companies a tactical advantage by allowing them to exploit their newfound knowledge of an individual or small business's litigation budget. Further, it would also force Louisiana citizens trying to recover from natural disasters to potentially reveal their assessment of the litigation, and other information provided to underwrite the legal merits of their claim.

Proponents of Senate Bill 196 argued the legislation is necessary for litigation transparency, but the bill only requires plaintiffs to unilaterally disclose their commercial legal financing arrangements. If true transparency is what was intended, the legislation would have required all parties to disclose their legal financing arrangements. The proposed structure has one desired outcome - to deter commercial legal finance companies from doing business in Louisiana. The only beneficiaries of this would be wrongdoers who can simply outlast victims because they have greater financial resources.

The Louisiana Legislature should make every effort to level the playing field for all of those who are forced to litigate disputes. Instead, this bill operates to give one side in litigation an advantage, to the detriment of those who are seeking to recover from injury, economic damage, or property loss. As such, it will not become law."