

2024 Regular Session

SENATE BILL NO. 355

BY SENATOR STINE

CONTRACTS. Provides for regulation of litigation funding by a third party that is a foreign person, state, or wealth fund. (8/1/24)

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. 9:3580.7, relative to litigation disclosure; to provide
4 relative to financial disclosure; to provide relative to the creation of the
5 "Transparency and Limitations on Foreign Third-Party Litigation Funding"; to
6 provide for definitions, terms, and conditions; to provide for contract disclosures; to
7 provide for violations and contracts; to provide for time limitations; to provide for
8 certification formation; to provide relative to prohibitions for third-party funding; to
9 provide for enforcement of foreign litigation; to provide relative to legislative
10 reports; to provide relative to prospective application; and to provide for related
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Chapter 2-C of Title 12 of the Louisiana Revised Statutes of 1950,
14 comprised of R.S. 9:3580.1 through R.S. 9:3580.7, is hereby enacted to read as follows:

15 **CHAPTER 2-C. TRANSPARENCY AND LIMITATIONS ON**

16 **FOREIGN THIRD-PARTY LITIGATION FUNDING**

17 **§3580.1. Short title**

1 This Chapter shall be known and may be cited as the "Transparency and
2 Limitations on Foreign Third-Party Litigation Funding".

3 §3580.2. Definitions

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

7 (1) "Foreign person" means a person or an entity that is not one of the
8 following:

9 (a) A citizen of the United States.

10 (b) An alien lawfully admitted for permanent residence in the United
11 States.

12 (c) An unincorporated association, a majority of members of which are
13 citizens of the United States or aliens lawfully admitted for permanent residence
14 in the United States.

15 (d) A corporation that is incorporated in the United States.

16 (2) "Foreign state" means a political subdivision of a foreign state or an
17 agency or instrumentality of a foreign state.

18 (3) "Agency or instrumentality of a foreign state" means any entity
19 which is all of the following:

20 (a) A separate legal person, corporate or otherwise.

21 (b) An organ of a foreign state or political subdivision thereof, or a
22 majority of whose shares or other ownership interest is owned by a foreign state
23 or political subdivision thereof.

24 (c) Neither a citizen of the United States, nor created under the laws of
25 any third country.

26 (4) "Foreign sovereign wealth fund" means an investment fund owned
27 or controlled by a foreign state or an agency or instrumentality of a foreign
28 state.

29 (5) "Litigation expenses" refers to costs typically incurred in the course

1 of civil litigation, including but not limited to filing fees, expert witness fees,
2 transcript fees, court costs, travel expenses, and office overhead, but not
3 including funds intended for use by a party for personal or familial expenses,
4 such as food, rent, mortgage payments, car payments, and medical bills.

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

17 (7) "National security interests" means those interests relating to the
18 national defense, foreign intelligence and counterintelligence, international, and
19 domestic security, and foreign relations.

20 (8) "Foreign third-party litigation funder" means a foreign person,
21 foreign state, or foreign sovereign wealth fund other than the named parties,
22 counsel of record, or law firm of record, that is a third-party litigation funder.

23 (9) "Third-party litigation funder" means any person or entity that
24 provides funding intended to defray litigation expenses or the financial impact
25 of a negative judgment related to a civil action and has the contractual right to
26 receive or make any payment that is contingent on the outcome of an identified
27 civil action by settlement, judgment, or otherwise or on the outcome of any
28 matter within a portfolio that includes the action and involves the same counsel
29 or affiliated counsel. This term does not apply to:

1 (a) The named parties, counsel of record, or law firm of record providing
2 funding intended to defray litigation expenses related to the civil action.

3 (b) A person or entity providing funding solely intended to pay costs of
4 living or other personal or familial expenses during the pendency of such civil
5 action where such funds are not used to defray litigation expenses.

6 (c) Counsel of record, or law firm of record, or any referring counsel
7 providing legal services on a contingency fee basis or to advance his or her
8 client's legal costs where the services or costs are provided by counsel of record
9 or law firm of record in accordance with the Rules of Professional Conduct.

10 (d) A health insurer, medical provider, or assignee that has paid, is
11 obligated to pay, or is owed any sums for health care for an injured person
12 under the terms of a health insurance plan or other agreement.

13 (e) A financial institution providing loans made directly to a party,
14 counsel of record, or a law firm of record when repayment of the loan is not
15 contingent upon the outcome of such civil action or on the outcome of any
16 matter within a portfolio that includes such civil action and involves the same
17 counsel or affiliated counsel.

18 (f) A nonprofit legal organization exempt from federal income tax under
19 501(c)(3) of the United States Internal Revenue Code, or any person providing
20 funding to a nonprofit legal organization that represents clients on a pro bono
21 basis. This Subparagraph does not affect the award of costs or attorney fees to
22 a nonprofit legal organization or related attorney.

23 §3580.3. Disclosure of foreign third-party litigation funding and foreign source
24 certification by foreign persons, foreign state, or foreign
25 sovereign wealth funds

26 A. In any civil action in which a foreign third-party litigation funder
27 provides funds intended to defray litigation expenses or the financial impact of
28 a negative judgment and the source or sources of its funding includes a foreign
29 person, foreign state, or foreign sovereign wealth fund, the third-party litigation

1 funder shall meet all of the following requirements:

2 (1) Disclose in writing to the attorney general the name, the address, and
3 citizenship or the country of incorporation or registration of any foreign person,
4 foreign state, or foreign sovereign wealth fund that has a right to receive or
5 obligation to make any payment that is contingent on the outcome of the civil
6 action, or portfolio that includes the civil action and involves the same counsel
7 of record or affiliated counsel, by settlement, judgment, or otherwise.

8 (2) Disclose in writing to the attorney general the name, address, the
9 citizenship or the country of incorporation or registration of any foreign person,
10 foreign state, or foreign sovereign wealth fund that has received or is entitled
11 to receive proprietary information or information affecting national security
12 interests obtained as a result of the funding agreement for such civil action. This
13 disclosure does not pertain to information received by a party to the action,
14 counsel of record, or law firm of record.

15 (3) Produce to the attorney general a copy of any agreement creating a
16 contingent right described in Subparagraph (1) or (2) of this Subsection.

17 B.(1) The disclosure and certification required by this Section shall be
18 made no later than thirty days after execution of any agreement or the date on
19 which the civil action is filed.

20 (2) A party who enters into an agreement described in this Section after
21 the date on which the civil action is filed shall make the disclosure required by
22 this Section no later than thirty days after being served.

23 §3580.4. Foreign disclosure; certification

24 A. A disclosure required pursuant to R.S. 9:3580.3 shall be made of a
25 declaration under penalty of perjury based on actual knowledge of the
26 declarant formed after reasonable inquiry, provided to the attorney general by
27 the third-party litigation funder making the disclosure, and maintained by the
28 attorney general to preserve the confidentiality of the parties to the litigation,
29 attorneys, and law firms.

1 B. No later than thirty days after the date on which a third-party
2 litigation funder knew that the disclosure required pursuant to R.S. 9:3580.3 is
3 incomplete or inaccurate in any material respect, the third-party litigation
4 funder shall supplement or correct the disclosure.

5 §3580.5. Third-party litigation funding; prohibitions

6 It shall be unlawful for any foreign third-party litigation funder to
7 engage in any of the following:

8 (1) Knowingly enter into an agreement creating a right for anyone, other
9 than the named parties, counsel of record, or law firm of record, to receive or
10 make any payment that is contingent on the outcome of a civil action or any
11 matter within a portfolio that includes the civil action and involves the same
12 counsel of record or affiliated counsel, the terms of which are to be satisfied by
13 funds directly sourced, in whole or in part, from a foreign state or foreign
14 sovereign wealth fund.

15 (2) Direct or make any decisions with respect to the course of any civil
16 action for which the litigation funder has provided funding intended to defray
17 litigation expenses or the financial impact of a negative judgment related to the
18 civil action. This prohibition includes but is not limited to decisions in
19 appointing or changing counsel, choice or use of expert witnesses, litigation
20 strategy, and settlement or other disposition.

21 (3) Be assigned rights to or in a civil action for which the litigation
22 funder has provided funding intended to defray litigation expenses related to
23 the civil action or the financial impact of a negative judgment, other than the
24 right to receive a share of the proceeds pursuant to the litigation financing
25 agreement.

26 §3580.6. Enforcement

27 A. Any agreement in violation of this Chapter shall be null and void.

28 B. A violation of this Chapter by a foreign third-party litigation funder
29 or a third-party litigation funder is a deceptive and unfair trade practice

1 actionable pursuant to the applicable laws of the state of Louisiana.

2 C. The attorney general may institute a legal action in a court of
 3 competent jurisdiction to enforce compliance, impose fines, or prohibit a foreign
 4 third-party litigation funder from operating within this state, or any other
 5 appropriate sanctions for violation of any provision of this Chapter.

6 §3580.7. Reports to the legislature

7 A. The attorney general shall, at least once each calendar year, report to
 8 the president of the Senate and the speaker of the House of Representatives
 9 describing foreign involvement in litigation financing agreements in the
 10 preceding calendar year.

11 B. The report shall include:

12 (1) The name, citizenship or the country of incorporation or registration
 13 of any foreign person, foreign state, or foreign sovereign wealth fund and
 14 whether they were providing funds indented to defray litigation expenses or the
 15 financial impact of a negative judgment.

16 (2) Whether any third-party litigation funder violated the prohibitions
 17 of this Chapter, and if the attorney general took any enforcement action under
 18 this Chapter.

19 (3) Any determinations or analysis of the disclosures received.

20 C. The report shall not identify the parties to the civil action, the counsel
 21 of record, or the law firm of record.

22 D. The attorney general shall distribute the reports pursuant to this
 23 Section in compliance with the provisions of R.S. 24:772.

24 Section 2. The provisions of this Act shall have prospective application.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Hanna Gettys.

Proposed law provides definitions for the following terms: "foreign person", "foreign state", "agency or instrumentality of a foreign state", "foreign sovereign wealth fund", "litigation expenses", "proprietary information", "national security interests", "foreign third-party

litigation funder", and "third-party litigation funder".

Proposed law provides that in any civil action in which a foreign third-party litigation funder provides funds intended to defray litigation expenses or the financial impact of a negative judgment and the source or sources of its funding includes a foreign person, foreign state, or foreign sovereign wealth fund, the third-party litigation funder shall meet all of the following requirements:

- (1) Disclose in writing to the attorney general the name, the address, and citizenship or the country of incorporation or registration of any foreign person, foreign state, or foreign sovereign wealth fund that has a right to receive or obligation to make any payment that is contingent on the outcome of the civil action, or portfolio that includes the civil action and involves the same counsel of record or affiliated counsel, by settlement, judgment, or otherwise.
- (2) Disclose in writing to the attorney general the name, address, the citizenship or the country of incorporation or registration of any foreign person, foreign state, or foreign sovereign wealth fund that has received or is entitled to receive proprietary information or information affecting national security interests obtained as a result of the funding agreement for such civil action. This disclosure does not pertain to information received by a party to the action, counsel of record, or law firm of record.
- (3) Produce to the attorney general a copy of any agreement creating a contingent right described in proposed law.

Proposed law provides that the disclosure and certification required by proposed law shall be made no later than 30 days after execution of any agreement or the date on which the civil action is filed.

Proposed law provides that a party who enters into an agreement described in proposed law after the date on which the civil action is filed shall make the disclosure required by proposed law no later than 30 days after being served.

Proposed law provides that a disclosure required pursuant to proposed law shall be made of a declaration under penalty of perjury based on actual knowledge of the declarant formed after reasonable inquiry, provided to the attorney general by the third-party litigation funder making the disclosure, and maintained by the attorney general to preserve the confidentiality of the parties to the litigation, attorneys, and law firms.

Proposed law provides that no later than 30 days after the date on which a third-party litigation funder knew that the disclosure required pursuant to proposed law is incomplete or inaccurate in any material respect, the third-party litigation funder shall supplement or correct the disclosure.

Proposed law provides that it shall be unlawful for any foreign third-party litigation funder to engage in any of the following:

- (1) Knowingly enter into an agreement creating a right for anyone, other than the named parties, counsel of record, or law firm of record, to receive or make any payment that is contingent on the outcome of a civil action or any matter within a portfolio that includes the civil action and involves the same counsel of record or affiliated counsel, the terms of which are to be satisfied by funds directly sourced, in whole or in part, from a foreign state or foreign sovereign wealth fund.
- (2) Direct or make any decisions with respect to the course of any civil action for which the litigation funder has provided funding intended to defray litigation expenses or the financial impact of a negative judgment related to the civil action. This

prohibition includes, but is not limited to, decisions in appointing or changing counsel, choice or use of expert witnesses, litigation strategy, and settlement or other disposition.

- (3) Be assigned rights to or in a civil action for which the litigation funder has provided funding intended to defray litigation expenses related to the civil action or the financial impact of a negative judgment, other than the right to receive a share of the proceeds pursuant to the litigation financing agreement.

Proposed law provides that any agreement in violation of this proposed law shall be null and void.

Proposed law provides that a violation of this proposed law by a foreign third-party litigation funder or a third-party litigation funder is a deceptive and unfair trade practice actionable pursuant to the applicable laws of the state of La.

Proposed law provides that the attorney general may institute a legal action in a court of competent jurisdiction to enforce compliance, impose fines, or prohibit a foreign third-party litigation funder from operating within this state, or any other appropriate sanctions for violation of any provision of proposed law.

Proposed law provides that the attorney general shall, at least once each calendar year, report to the president of the Senate and the speaker of the House of Representatives describing foreign involvement in litigation financing agreements in the preceding calendar year.

Proposed law provides that the report shall include:

- (1) The name, citizenship or the country of incorporation or registration of any foreign person, foreign state, or foreign sovereign wealth fund and whether they were providing funds indented to defray litigation expenses or the financial impact of a negative judgment.
- (2) Whether any third-party litigation funder violated the prohibitions of proposed law, and if the attorney general took any enforcement action under proposed law.
- (3) Any determinations or analysis of the disclosures received.

Proposed law provides that the report shall not identify the parties to the civil action, the counsel of record, or the law firm of record.

Proposed law provides that the attorney general shall distribute the reports pursuant to proposed law in compliance with the provisions of proposed law.

Proposed law provides that the provisions of proposed law shall have prospective application.

Effective August 1, 2024.

(Adds R.S. 9:3580.1-3580.7)

Summary of Amendments Adopted by Senate

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

1. Makes technical changes.
2. Clarifies "third-party" to mean "foreign third-party" in certain instances.

Senate Floor Amendments to engrossed bill

1. Clarifies the definition of "third-party litigation funder".