

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 355

2024 Regular Session

Stine

KEYWORD AND SUMMARY AS RETURNED TO THE SENATE

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

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Change proposed law definitions of "foreign entity", "foreign country of concern", and "foreign third-party litigation funder".
2. Change proposed law references from "foreign person, foreign state, or foreign sovereign wealth fund" to "foreign entity".
3. Define "attorney", "litigation financier", "litigation financing", "litigation financing contract or agreement", "party", and "proprietary information" for purposes of proposed law.
4. Add proposed law relative to disclosure of financing agreements and discovery of litigation financing contracts or agreements.
5. Add disclosure requirements and procedure for class action lawsuits relative to proposed law.
6. Include that any litigation financing contract violations shall be an absolute nullity.
7. Make technical changes.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

SB 355 Reengrossed

2024 Regular Session

Proposed law provides definitions for the following terms: "foreign entity", "foreign country of concern", "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 entity, 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 entity 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 entity 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 entity.
- (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 entity 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.

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.

Effective Aug. 1, 2024.

(Adds R.S. 9:3580.1-3580.14)

Hanna Gettys
Attorney