

CONFERENCE COMMITTEE REPORT

SB 355

2024 Regular Session

Stine

May 29, 2024

To the Honorable President and Members of the Senate and to the Honorable Speaker and Members of the House of Representatives.

Ladies and Gentlemen:

We, the conferees appointed to confer over the disagreement between the two houses concerning Senate Bill No. 355 by Senator Stine, recommend the following concerning the Reengrossed bill:

1. That the House Committee Amendments proposed by the House Committee on Civil Law and Procedure and adopted by the House of Representatives on May 1, 2024, be adopted.
2. That Legislative Bureau Amendments proposed by the Legislative Bureau and adopted by the House of Representatives on May 1, 2024, be adopted.
3. That the House Floor Amendments No. 1, 2, and 3 by Representative Firment adopted by the House of Representatives on May 15, 2024, be adopted.
4. That the House Floor Amendment No. 4 by Representative Firment adopted by the House of Representatives on May 15, 2024, be rejected.
5. That the following amendments be made to the reengrossed bill:

AMENDMENT NO.1

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

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

**§3580.10. Short title**

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

**§3580.11. Definitions**

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

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

**(2) "Litigation financier" means third-party litigation funder as defined in R.S. 9:3580.2(7).**

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

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

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

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

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

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

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

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

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

(d) 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.

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

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

§3580.12. Disclosure of financing agreements; discovery

A. A litigation financier with a litigation financing contract or agreement with the party shall not decide, influence, or direct the party or the party's attorney with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding, or make any decision with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding. The right to make these decisions remains solely with the party and the party's attorney in the civil proceeding.

B. The existence of a litigation financing contract or agreement is subject to discovery in accordance with the Code of Civil Procedure and Code of Evidence in all civil actions.

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

**Chapter. This Chapter shall not be interpreted to require a nonprofit legal organization to disclose its donors or sources of funding."**

Respectfully submitted,

Senators:

Representatives:

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Senator Jeremy P. Stine

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Representative Nicholas Muscarello, Jr.

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Senator Franklin J. Foil

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Representative Michael "Gabe" Firment

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Senator Gregory A. Miller

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Representative Emily Chenevert

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

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## CONFERENCE COMMITTEE REPORT DIGEST

SB 355

2024 Regular Session

Stine

### Keyword and summary of the bill as proposed by the Conference Committee

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

#### Report adopts House amendments to:

1. Remove the definitions of "foreign person", "foreign state", "agency or instrumentality of a foreign state" and "foreign sovereign wealth fund".
2. Define "foreign entity" as an entity that is (a) owned or controlled by the government of a foreign country of concern, or (b) a partnership, association, corporation, organizing or other combination of persons organized under the law of or having its principal place of business in a foreign country of concern, or a subsidiary of such entity.
3. Define "foreign country of concern" as a foreign government listed in 15 CFR 7.4, including any agency of or any other entity of significant control of such foreign country of concern.
4. Change reference from a "foreign person, foreign state, or foreign sovereign wealth fund" to a "foreign entity".

#### Report rejects House amendments which would have:

1. Added proposed law relative to disclosure of financing agreements and discovery of litigation financing contracts or agreements.
2. Added disclosure requirements and procedure for class action lawsuits relative to proposed law.
3. Included that any litigation financing contract violations shall be an absolute nullity.

#### Report amends the bill to:

1. Provide that a litigation financier shall not decide, influence, or direct a contracting party to any decision regarding a civil proceeding.
2. Provide that a litigation contract or agreement is subject to discovery in accordance with the Code of Civil Procedure and Code of Evidence in all civil actions arising out of personal injuries.
3. Require that nonprofit legal organizations funded by private donors shall represent clients on a pro bono basis, and awards of costs or attorney fees to nonprofit legal organizations shall not be affected by proposed law.

#### Digest of the bill as proposed by the Conference Committee

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. Further provides that 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 Reps. 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 a litigation financier with a litigation financing contract or agreement with the party shall not decide, influence, or direct the party or the party's attorney with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding, or make any decision with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding. Further provides that the right to make these decisions remains solely with the party and the party's attorney in the civil proceeding.

Proposed law provides that the existence of a litigation financing contract or agreement is subject to discovery in accordance with the present law in all civil actions arising out of personal injuries.

Proposed law provides that proposed law shall not apply to nonprofit legal organizations funded by private donors that represent clients on a pro bono basis. Further provides that awards of costs or attorney fees to nonprofit legal organizations shall not be affected by proposed law.

Proposed law provides that proposed law shall not be interpreted to require a nonprofit legal organization to disclose its donors or sources of funding.

Effective August 1, 2024.

(Adds R.S. 9:3580.1-3580.12)