

SENATE BILL NO. 355

BY SENATORS STINE AND HODGES

1 AN ACT

2 To enact Chapter 2-C of Code Title XII of Code Book III of Title 9 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 9:3580.1 through R.S. 9:3580.7, and to
4 enact Chapter 2-D of Code Title XII of Code Book III of Title 9 of the Louisiana
5 Revised Statutes of 1950, to be comprised of R.S. 9:3580.10 through 3580.12,
6 relative to litigation disclosure; to provide relative to financial disclosure; to provide
7 relative to the creation of the "Transparency and Limitations on Foreign Third-Party
8 Litigation Funding"; to provide for definitions, terms, and conditions; to provide for
9 contract disclosures; to provide for violations and contracts; to provide for time
10 limitations; to provide for certification formation; to provide relative to prohibitions
11 for third-party funding; to provide for enforcement of foreign litigation; to provide
12 relative to legislative reports; to provide relative to the creation of the Litigation
13 Financing Disclosure Act; to provide for discovery; to provide with respect to class
14 action lawsuits; to provide relative to prospective application; and to provide for
15 related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. Chapter 2-C of Code Title XII of Code Book III of Title 9 of the Louisiana
18 Revised Statutes of 1950, comprised of R.S. 9:3580.1 through R.S. 9:3580.7, and Chapter
19 2-D of Code Title XII of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950,
20 comprised of R.S. 9:3580.10 through 3580.12, are hereby enacted to read as follows:

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

22 **FOREIGN THIRD-PARTY LITIGATION FUNDING**

23 **§3580.1. Short title**

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

26 **§3580.2. Definitions**

27 **For the purpose of this Chapter, the following terms have the meanings**

1 ascribed to them in this Section, unless a different meaning clearly appears
2 from the context:

3 (1) "Foreign entity" means an entity that is (a) owned or controlled by
4 the government of a foreign country of concern, or (b) a partnership,
5 association, corporation, organizing or other combination of persons organized
6 under the law of or having its principal place of business in a foreign country
7 of concern, or a subsidiary of such entity.

8 (2) "Foreign country of concern" means a foreign government listed in
9 15 CFR 7.4, including any agency of or any other entity of significant control of
10 such foreign country of concern.

11 (3) "Litigation expenses" refers to costs typically incurred in the course
12 of civil litigation, including but not limited to filing fees, expert witness fees,
13 transcript fees, court costs, travel expenses, and office overhead, but not
14 including funds intended for use by a party for personal or familial expenses,
15 such as food, rent, mortgage payments, car payments, and medical bills.

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

28 (5) "National security interests" means those interests relating to the
29 national defense, foreign intelligence and counterintelligence, international, and
30 domestic security, and foreign relations.

1 (6) "Foreign third-party litigation funder" means a foreign entity that
2 is a third-party litigation funder.

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

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

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

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

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

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

27 (f) A nonprofit legal organization exempt from federal income tax under
28 Section 501(c)(3) of the Internal Revenue Code, or any person providing
29 funding to a nonprofit legal organization that represents clients on a pro bono
30 basis. This Subparagraph does not affect the award of costs or attorney fees to

1 a nonprofit legal organization or related attorney.

2 §3580.3. Disclosure of foreign third-party litigation funding and foreign source
3 certification by foreign entities

4 A. In any civil action in which a foreign third-party litigation funder
5 provides funds intended to defray litigation expenses or the financial impact of
6 a negative judgment and the source or sources of its funding includes a foreign
7 entity, the third-party litigation funder shall meet all of the following
8 requirements:

9 (1) Disclose in writing to the attorney general the name, the address, and
10 citizenship or the country of incorporation or registration of any foreign entity
11 that has a right to receive or obligation to make any payment that is contingent
12 on the outcome of the civil action, or portfolio that includes the civil action and
13 involves the same counsel of record or affiliated counsel, by settlement,
14 judgment, or otherwise.

15 (2) Disclose in writing to the attorney general the name, address, the
16 citizenship or the country of incorporation or registration of any foreign entity
17 that has received or is entitled to receive proprietary information or
18 information affecting national security interests obtained as a result of the
19 funding agreement for such civil action. This disclosure does not pertain to
20 information received by a party to the action, counsel of record, or law firm of
21 record.

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

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

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

30 §3580.4. Foreign disclosure; certification

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

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

11 §3580.5. Third-party litigation funding; prohibitions

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

14 (1) Knowingly enter into an agreement creating a right for anyone, other
15 than the named parties, counsel of record, or law firm of record, to receive or
16 make any payment that is contingent on the outcome of a civil action or any
17 matter within a portfolio that includes the civil action and involves the same
18 counsel of record or affiliated counsel, the terms of which are to be satisfied by
19 funds directly sourced, in whole or in part, from a foreign entity.

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

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

1 **§3580.6. Enforcement**

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

3 **B. A violation of this Chapter by a foreign third-party litigation funder**
4 **or a third-party litigation funder is a deceptive and unfair trade practice**
5 **actionable pursuant to the applicable laws of the state of Louisiana.**

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

10 **§3580.7. Reports to the legislature**

11 **A. The attorney general shall, at least once each calendar year, report to**
12 **the president of the Senate and the speaker of the House of Representatives**
13 **describing foreign involvement in litigation financing agreements in the**
14 **preceding calendar year.**

15 **B. The report shall include:**

16 **(1) The name, citizenship or the country of incorporation or registration**
17 **of any foreign entity and whether they were providing funds indented to defray**
18 **litigation expenses or the financial impact of a negative judgment.**

19 **(2) Whether any third-party litigation funder violated the prohibitions**
20 **of this Chapter, and if the attorney general took any enforcement action under**
21 **this Chapter.**

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

23 **C. The report shall not identify the parties to the civil action, the counsel**
24 **of record, or the law firm of record.**

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

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

28 **§3580.10. Short title**

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

1 **§3580.11. Definitions**

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

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

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

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

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

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

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

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

29 **(4) "Litigation financing contract or agreement" means a transaction in**
30 **which litigation financing is provided to a party or a party's attorney in return**

1 for assigning to the litigation financier a right to receive an amount including
2 payment of interest, fees, or any other consideration contingent in any respect
3 on the outcome of the underlying claim or action. The term "litigation financing
4 contract or agreement" does not include:

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

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

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

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

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

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

1 confidence by or for the entity from any other source.

2 §3580.12. Disclosure of financing agreements; discovery

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

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

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

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____