

RÉSUMÉ DIGEST

ACT 765 (SB 355)

2024 Regular Session

Stine

New 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".

New 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 new law.

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

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

New law provides that a disclosure required pursuant to new 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.

New 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 new law is incomplete or inaccurate in any material respect, the third-party litigation funder shall supplement or correct the disclosure.

New 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.

New law provides that any agreement in violation of this new law shall be null and void.

New law provides that a violation of this new 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.

New 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 new law.

New 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.

New 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 intended to defray litigation expenses or the financial impact of a negative judgment.
- (2) Whether any third-party litigation funder violated the prohibitions of new law, and if the attorney general took any enforcement action under new law.
- (3) Any determinations or analysis of the disclosures received.

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

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

New law provides that the provisions of new law shall have prospective application.

New law creates the Litigation Financing Disclosure Act.

New law provides for definitions of "attorney", "litigation financier", "litigation financing", "litigation financing contract or agreement", "party", and "proprietary information".

New 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.

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

New law provides that new 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 new law.

New law provides that new 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)