

HOUSE BILL No. 2694

By Committee on Judiciary

2-10

1 AN ACT concerning the financing of civil litigation; enacting the third-
2 party litigation financing consumer protection act; requiring registration
3 and regulation of litigation financiers by the secretary of state;
4 disclosure of certain information; annual report by the secretary of
5 state.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. (a) Sections 1 through 7, and amendments thereto, shall be
9 known and may be cited as the third-party litigation financing consumer
10 protection act.

11 (b) As used in this act:

12 (1) "Act" means the third-party litigation financing consumer
13 protection act.

14 (2) "Consumer" means any natural person who resides, is present or
15 is domiciled in Kansas or who is or may become a plaintiff or complainant
16 in a lawsuit or other legal dispute in Kansas.

17 (3) "Legal representative" means an attorney, a group of attorneys, a
18 law firm or an employee of such attorney, group or firm that may be
19 entitled to represent a consumer in a legal dispute in Kansas.

20 (4) "Litigation financier" means a person, group of persons or legal
21 entity engaged in the business of litigation financing or any other
22 mechanism created with the intent to finance litigation.

23 (5) "Litigation financing" means the funding of litigation activities or
24 related claims by an entity, such as an indemnitor or a liability insurer,
25 other than the parties themselves, the parties' counsel or an entity with a
26 preexisting contractual relationship with one of the parties. "Litigation
27 financing" includes the purchase of bills, accounts or liens or otherwise
28 paying for or purchasing services related to claims or litigation.

29 (6) (A) "Litigation financing transaction" means a transaction in
30 which litigation financing is provided to a consumer, legal representative
31 or medical provider in return for assigning to the litigation financier a
32 contingent right to receive an amount of the potential proceeds from a
33 consumer's judgment, award, settlement or verdict obtained with respect to
34 the consumer's legal claim or agreeing to pay the litigation financier
35 interest or other fees for the financing provided.

36 (B) "Litigation financing transaction" does not include legal

1 representation services provided to a consumer by a legal representative on
2 a contingency fee basis or legal costs advanced by a legal representative
3 when such services or costs are provided to or on behalf of a consumer by
4 a legal representative in the dispute and in accordance with the Kansas
5 rules of professional conduct for attorneys.

6 (7) "Medical provider" means the same as "healthcare provider" is
7 defined in K.S.A. 40-3401, and amendments thereto, and includes
8 employees, contractors, practice groups, partnerships or corporations of
9 medical providers.

10 New Sec. 2. (a) (1) A litigation financier shall not engage in a
11 litigation financing transaction in Kansas unless such financier is registered
12 as a litigation financier pursuant to this section.

13 (2) The secretary of state shall register a litigation financier that is a
14 business entity if such entity:

15 (A) Is active and in good standing as reflected in records of the
16 secretary of state; and

17 (B) has a charter, articles of organization, certificate of limited
18 partnership or other organizational document or, if such entity is a foreign
19 entity, such entity's Kansas application for a certificate of authority, that
20 contains a statement that such entity shall be designated as a litigation
21 financier pursuant to this act.

22 (3) The secretary of state shall register a litigation financier that is not
23 a business entity if such financier files an application for registration as a
24 litigation financier with a filing fee of \$100 on a form prescribed by the
25 secretary of state that contains:

26 (A) The applicant's full legal name and business name, if any;

27 (B) the physical street address and mailing address of the applicant;

28 (C) a telephone number through which the applicant may be reached;

29 (D) the name, physical street address, mailing address and telephone
30 number for a Kansas registered agent appointed to accept service of
31 process on behalf of the applicant;

32 (E) a statement that the applicant shall be designated as a litigation
33 financier pursuant to this act; and

34 (F) any other information required by the secretary of state.

35 (b) A litigation financier shall file with the secretary of state a surety
36 bond of not less than \$50,000. Such bond shall be made payable to any
37 person who may have a cause of action against such litigation financier for
38 a violation of this act. The bond shall continue in effect during any time a
39 litigation financier is registered pursuant to this act.

40 (c) A litigation financier shall notify the secretary of state when any
41 information on file with the secretary has changed within 30 days of such
42 change.

43 (d) All documents filed pursuant to this section are open records and

1 are subject to the open records act, K.S.A. 45-215 et seq., and amendments
2 thereto.

3 New Sec. 3. (a) A litigation financier shall not:

4 (1) Pay or offer commissions, referral fees or other forms of
5 consideration to any legal representative or medical provider for referring
6 a consumer to a litigation financier;

7 (2) accept any commissions, referral fees, rebates or other forms of
8 consideration from a legal representative or medical provider;

9 (3) advertise false or misleading information regarding such
10 financier's products or services;

11 (4) refer a consumer or potential consumer to a specific legal
12 representative or medical provider;

13 (5) fail to promptly supply copies of any complete litigation financing
14 contracts to the consumer who is the subject of such contract and such
15 consumer's legal representative;

16 (6) attempt to secure a remedy or obtain a waiver of any remedy,
17 including, but not limited to, compensatory, statutory or punitive damages,
18 that a consumer may be entitled to pursue;

19 (7) attempt to effect arbitration or effect waiver of a consumer's right
20 to a jury trial;

21 (8) offer or provide legal advice to a consumer regarding the
22 litigation financing or the underlying dispute;

23 (9) assign or securitize a litigation financing contract, in whole or in
24 part;

25 (10) report a consumer to a credit reporting agency if insufficient
26 funds remain from the net proceeds of litigation to repay the litigation
27 financier; or

28 (11) receive or exercise any right to direct or make any decisions with
29 respect to the conduct of a consumer's legal claim or any settlement or
30 resolution thereof.

31 (b) A legal representative retained by a consumer or a medical
32 provider for a consumer shall not have a financial interest in litigation
33 financing and shall not receive a referral fee or other consideration from
34 any litigation financier or a litigation financier's employees, owners or
35 affiliates.

36 New Sec. 4. (a) The terms of a litigation financing agreement shall be
37 in a written contract. There shall be no incomplete sections when the
38 contract is offered or presented to the consumer, legal representative or
39 medical provider.

40 (b) Litigation financing contracts shall contain the disclosures
41 specified in this subsection and shall constitute material terms of the
42 litigation financing contract. The following disclosures shall be typed in at
43 least 14-point bold font and be placed clearly and conspicuously

1 immediately above the consumer's signature line in a litigation financing
2 contract:

3 (1) "Consumer's right to cancellation: You may cancel this contract
4 without penalty or further obligation within five business days from the
5 date you signed this contract or received financing from [insert name of
6 litigation financier] by either returning the funds to [insert name, office
7 address and office hours of the litigation financier] or by U.S. mail [insert
8 name and mailing address of litigation financier]. For return by U.S. mail,
9 the postmark date on the returned funds or, if mailed by registered or
10 certified mail, the date of the return receipt requested shall be the date of
11 return."

12 (2) "The fees charged pursuant to this agreement shall not exceed
13 [insert annual interest percentage rate, percentage of award or settlement
14 proceeds or dollar amount]."

15 (3) "The litigation financier agrees that it has no right to and will not
16 make any decisions about the conduct of your lawsuit or dispute and that
17 the right to make those decisions remains solely with you and your legal
18 representative."

19 (4) "If there is no recovery of any money from your legal claim or if
20 there is not enough money to satisfy the portion assigned to [insert name
21 of the litigation financier] in full, you will not owe anything in excess of
22 your recovery."

23 (5) "Do not sign this contract before you read it completely. If this
24 contract contains any incomplete sections, you are entitled to a completely
25 filled-in copy of the contract prior to signing it. Before you sign this
26 contract, you should obtain the advice of an attorney. Depending on the
27 circumstances, you may want to consult a tax advisor, a financial
28 professional or an accountant."

29 (c) If the consumer is represented by a legal representative in the
30 dispute that is the subject of the litigation financing contract, the legal
31 representative shall acknowledge in the contract that the legal
32 representative, or the legal representative's employer or employees, has not
33 received or paid a referral fee or any other consideration from or to the
34 litigation financier and will not receive or pay such referral fee or
35 consideration.

36 (d) If the consumer's legal representative is a party to a litigation
37 financing agreement related to the consumer's legal proceeding, the legal
38 representative shall share the agreement between the legal representative
39 and the litigation financier with the consumer. The agreement shall be
40 accompanied by the disclosures required by subsection (b), and the
41 consumer shall sign an acknowledgment that the agreement has been read
42 and the required disclosures were provided.

43 New Sec. 5. (a) Except as otherwise stipulated by the court, a

1 consumer or such consumer's legal representative shall, without awaiting a
2 discovery request, provide to all parties to the litigation, including an
3 insurer engaged prior to litigation, any litigation financing contract or
4 agreement under which any person, other than a legal representative
5 permitted to charge a contingent fee representing a party, has received or
6 has a right to receive compensation or proceeds from the consumer that are
7 contingent on and sourced from any proceeds of the civil action by
8 settlement, judgment or otherwise.

9 (b) The existence of litigation financing, litigation financing
10 transactions and all participants in such financing arrangements are
11 permissible subjects of discovery in all personal injury litigation or matters
12 arising out of personal injury.

13 New Sec. 6. (a) Each litigation financier shall file an annual report
14 with the secretary of state in a form and manner prescribed by the
15 secretary in rules and regulations. Such report shall include, but not be
16 limited to:

17 (1) For each person that directly or indirectly owns, controls, holds
18 with the power to vote or holds proxies representing 5% or more of the
19 voting securities of the litigation financier:

20 (A) The legal name and address of each person;

21 (B) if the person is an individual, such person's principal occupation
22 and offices or positions held during the immediately preceding five years;

23 (C) if the person is an individual, any convictions of crimes other
24 than traffic infractions during the immediately preceding 10 years; and

25 (D) if the person is not an individual, a report of the nature of the
26 person's business operations during the immediately preceding five years,
27 a narrative description of the business intended to be done by the person
28 and a list of all individuals who are or who have been selected to become
29 directors or executive officers; and

30 (2) for each litigation financing transaction entered in this state or
31 involving a claim to be litigated in this state:

32 (A) The amount, date of payment, name and address of each person
33 that received any amount of financing from such litigation financier during
34 the previous calendar year;

35 (B) the amount, date of payment and source of payment for all
36 proceeds obtained by the litigation financier during the previous calendar
37 year from and judgment, award, settlement or verdict in a litigation
38 financing transaction; and

39 (C) any other information required by the secretary of state.

40 (b) (1) The secretary of state shall report annually to the house of
41 representatives standing committee on judiciary, the senate standing
42 committee on judiciary, the house of representatives standing committee
43 on commerce, labor and economic development and the senate standing

1 committee on commerce, or any successor committees, with a summary of
2 the reports received pursuant to subsection (a). Such summary shall not
3 contain any personally identifiable information of any consumer.

4 (2) The secretary of state shall publish the summary of reports
5 described in paragraph (1) on the secretary of state's website. Nothing in
6 this subsection shall affect the obligation to disclose litigation financing
7 contracts or other agreements pursuant to section 5, and amendments
8 thereto.

9 New Sec. 7. (a) This act shall apply to any class action lawsuit. Class
10 members and the court shall be advised if the proposed class attorney has a
11 legal or financial relationship with a litigation financier.

12 (b) This act shall not apply to litigation financing provided to
13 commercial enterprises in support of commercial litigation unless the
14 situation arises from a personal injury claim or an aggregation of personal
15 injury claims, whether by subrogation, assignment or any other basis.

16 (c) Any violation of this act shall make a litigation financing contract
17 unenforceable by the litigation financier, the consumer or any successor-in-
18 interest to the litigation financing contract.

19 Sec. 8. This act shall take effect and be in force from and after
20 January 1, 2023, and its publication in the statute book.