

SENATE BILL NO. 269

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE LITIGATION FINANCING TRANSPARENCY AND CONSUMER PROTECTION ACT; REQUIRING THE REGISTRATION OF LITIGATION FINANCERS; ENSURING THE PUBLIC TRANSPARENCY OF PERSONS INVOLVED IN LITIGATION FINANCING ACTIVITIES; ESTABLISHING CONSUMER PROTECTIONS AND REGULATING THE PRACTICE OF LITIGATION FINANCING; ESTABLISHING MINIMUM STANDARDS AND DISCLOSURES FOR LITIGATION FINANCING CONTRACTS; REQUIRING THE DISCLOSURE IN A CIVIL ACTION OF ANY LITIGATION FINANCING TRANSACTION AND LITIGATION FINANCING CONTRACT; CREATING CERTAIN EXEMPTIONS; AUTHORIZING THE SECRETARY OF STATE TO ESTABLISH ADMINISTRATIVE RULES; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 11] may be cited as the "Litigation Financing Transparency and Consumer Protection Act".

NEW SECTION. Section 2. Definitions. For the purposes of [sections 1 through 11], the following definitions apply:

(1) "Consumer" means any individual who resides, is present, or is domiciled in this state or who is or may become a plaintiff, claimant, or complainant in a civil action or an administrative proceeding or in pursuit of any claim or cause of action in this state.

(2) "Entity" means any domestic or foreign corporation, partnership, limited partnership, limited liability company, trust, fund, plan, or any other business, enterprise, association, or organization of any kind or nature.

(3) "Legal representative" means any attorney, group of attorneys, or law firm duly licensed and

1 authorized to practice law and to represent a consumer in a civil action, administrative proceeding , or claim to
2 recover damages in this state.

3 (4) "Litigation financier" means any person or group of persons engaged in, or formed, created , or
4 established for the purpose of engaging in, the business of litigation financing or any other business or
5 economic activity in which a person or group of persons receive consideration of any kind in exchange for
6 providing litigation financing.

7 (5) "Litigation financing" means the financing, funding, advancing, or loaning of money to pay for
8 fees, costs, expenses, or any other sums arising from or in any manner related to a civil action, administrative
9 proceeding, claim, or cause of action, if the financing, funding, advancing, or loaning of money is provided by
10 any person other than a person who is:

11 (a) a party to the civil action, administrative proceeding, claim, or cause of action;

12 (b) a legal representative engaged, directly or indirectly through another legal representative, to
13 represent a party in the civil action, administrative proceeding, claim, or cause of action; or

14 (c) an entity or insurer with a preexisting contractual obligation to indemnify or defend a party to
15 the civil action, administrative proceeding, claim, or cause of action.

16 (6) (a) "Litigation financing contract" means a written contract in which a person agrees to provide
17 litigation financing to any person in conjunction with a civil action or an administrative proceeding or in pursuit of
18 any claim or cause of action in this state in consideration for:

19 (i) the payment of interest, fees, or other consideration to the person providing the litigation
20 financing; or

21 (ii) granting or assigning to the person providing the litigation financing a contingent right to
22 receive payment from the value of any proceeds or other consideration realized from any judgment, award,
23 settlement, verdict, or other form of monetary relief any consumer, legal representative, or entity may receive or
24 recover in relation to the civil action, administrative proceeding, claim, or cause of action.

25 (b) The term does not include any agreement, contract, or engagement of a legal representative to
26 render legal services to a consumer on a contingency fee basis, including the advancement of legal costs by
27 the legal representative, in which the services or costs are provided to or on behalf of a consumer by the legal
28 representative representing the consumer in the civil action, administrative proceeding, claim , or cause of

1 action.

2 (7) "Person" includes an individual and an entity.

3 (8) "Secretary" means the secretary of state provided for in Title 2, chapter 15, part 4.

4

5 **NEW SECTION. Section 3. Registration.** (1) A person may not engage in litigation financing in this
6 state unless the person is registered with the secretary of state as a litigation financier pursuant to [sections 1
7 through 11].

8 (2) If the person registering as a litigation financier is an entity:

9 (a) the entity must be active and in good standing as reflected in the office of the secretary of
10 state; and

11 (b) the entity's articles of incorporation, charter, articles of organization, certificate of limited
12 partnership, or other organizational or governing document must contain a statement that the entity has the
13 power to engage in the business of litigation financing and is designated as a litigation financier pursuant to
14 [sections 1 through 11].

15 (3) To register as a litigation financier, a person shall file a registration statement with the secretary
16 of state setting forth the following information:

17 (a) the legal name of the litigation financier;

18 (b) the physical street address and mailing address of the litigation financier;

19 (c) a telephone number or e-mail address through which the litigation financier may be contacted;

20 (d) the physical street address and mailing address of the licensed financier's registered office and

21 the name of the registered agent at the registered office who is authorized to accept service of process on
22 behalf of the licensed financier; and

23 (e) any other information the secretary of state considers necessary.

24 (4) If the person seeking to register as a litigation financier is an entity, the following information
25 must be set forth in the registration statement with respect to each person that, directly or indirectly, owns,
26 controls, holds with the power to vote, or holds proxies representing 5% or more of the voting securities of the
27 litigation financier:

28 (a) the legal name, physical street address, and mailing address of each person;

1 (b) if the person is an individual:

2 (i) the individual's occupation;

3 (ii) any offices and positions held with the litigation financier during the past 5 years; and

4 (iii) any conviction of a crime other than misdemeanor traffic violations during the past 10 years;

5 (c) if the person is an entity:

6 (i) the nature of the entity's business operations, if any, during the past 5 years or a description of
7 the business intended to be done by the entity and the entity's subsidiaries, if any; and

8 (ii) a list of all individuals who are or who have been selected to become directors or officers of the
9 entity and each subsidiary of the entity. The list must include for each individual the information required by
10 subsection (2).

11 (5) A litigation financier subject to registration under [sections 1 through 11] shall file an amended
12 registration within 30 days whenever the information contained in the most recently filed registration changes or
13 becomes inaccurate or incomplete in any respect.

14 (6) The secretary of state is authorized to prescribe the forms and the filing fees the secretary of
15 state considers necessary for the purposes of registration and filing any amended registration or annual report
16 pursuant to [sections 1 through 11].

17 (7) All documents and information filed with the secretary of state pursuant to this section are
18 public records.

19 (8) The secretary of state's duty to file documents under this section is ministerial. The secretary of
20 state's filing or refusing to file a document does not create a presumption that:

21 (a) the document does or does not conform to the requirements of this chapter; or

22 (b) the information contained in the document is correct or incorrect.

23

24 **NEW SECTION. Section 4. Litigation financing protections.** (1) A litigation financier may not:

25 (a) pay or offer commissions, referral fees, rebates, or other forms of consideration to any person
26 in exchange for referring a consumer to a litigation financier;

27 (b) accept any commissions, referral fees, rebates, or other forms of consideration from any
28 person providing any goods or rendering any services to the consumer;

- 1 (c) charge a rate of interest that exceeds that rate of interest allowed under 31-1-107;
- 2 (d) receive or recover any contingent payment that exceeds 40% of the amount of any judgment,
3 award, settlement, verdict, or other form of monetary relief obtained in the civil action, administrative
4 proceeding, claim, or cause of action that is the subject of the litigation contract;
- 5 (e) advertise false or misleading information regarding its products or services;
- 6 (f) refer or require any consumer to hire or engage any person providing any goods or rendering
7 any services to the consumer;
- 8 (g) fail to promptly deliver a fully completed and signed litigation financing contract to the consumer
9 and the consumer's legal representative;
- 10 (h) attempt to secure a remedy or obtain a waiver of any remedy, including but not limited to
11 compensatory, statutory, or punitive damages, that the consumer may or may not be entitled to pursue or
12 recover otherwise;
- 13 (i) offer or provide legal advice to the consumer;
- 14 (j) assign, including securitizing, a litigation financing contract in whole or in part;
- 15 (k) report a consumer to a credit reporting agency if insufficient funds remain to repay the litigation
16 financier in full from the proceeds received from any judgment, award, settlement, verdict, or other form of
17 monetary relief obtained in the civil action, administrative proceeding, claim, or cause of action that is the
18 subject of the litigation financing contract; and
- 19 (l) demand, request, receive, or exercise any right to influence, affect, or otherwise make any
20 decision in the handling, conduct, administration, litigation, settlement, or resolution of any civil action,
21 administrative proceeding, claim, or cause of action in which the litigation financier has provided litigation
22 financing. All rights remain solely with the consumer and the consumer's legal representative.
- 23 (2) A person who provides any goods or renders any services to the consumer may not have a
24 financial interest in litigation financing and may not receive any commissions, referral fees, rebates, or other
25 forms of consideration from any litigation financier or the litigation financier's employees, owners, or affiliates.
26

27 **NEW SECTION. Section 5. Litigation financing contract -- disclosures.** (1) The terms and
28 conditions of a litigation financing contract must be set forth in a fully completed written contract with no terms

1 or conditions omitted. The litigation financing contract must contain all terms and conditions at the time it is
2 signed by any party to the litigation financing contract.

3 (2) On execution of a litigation financing contract, a litigation financier may not amend the terms or
4 conditions of the litigation financing contract without full disclosure to and the prior written consent of all parties
5 to the litigation financing contract.

6 (3) A litigation financing contract must set forth the name, physical street address, and mailing
7 address of the litigation financier on page 1 of the litigation financing contract.

8 (4) A litigation financing contract must contain the following disclosures that constitute material
9 terms and conditions of the litigation financing contract and must be typed in at least 14-point bold font and be
10 placed clearly and conspicuously immediately above the consumer's signature line in the litigation financing
11 contract:

12 "IMPORTANT DISCLOSURES -- PLEASE READ CAREFULLY

13 1. Right to Cancellation: You may cancel this litigation financing contract without penalty or further
14 obligation within five (5) business days from the date you sign this contract or the date you receive financing
15 from the litigation financier, whichever date is later. You may cancel by sending a notice of cancellation to the
16 litigation financier and returning to the litigation financier any funds received from the litigation financier at the
17 litigation financier's address set forth on page 1 of this contract.

18 2. The maximum amount the litigation financier may receive or recover from any contingent
19 payment may not exceed forty percent (40%) of the amount of any judgment, award, settlement, verdict, or
20 other form of monetary relief obtained in the civil action, administrative proceeding, claim, or cause of action
21 that is the subject of this litigation contract.

22 3. The litigation financier agrees that it has no right to, and will not demand, request, receive, or
23 exercise any right to, influence, affect, or otherwise make any decision in the handling, conduct, administration,
24 litigation, settlement, or resolution of your civil action, administrative proceeding, claim, or cause of action. All of
25 these rights remain solely with you and your legal representative.

26 4. If there is no recovery of any money from your civil action, administrative proceeding, claim, or
27 cause of action, or if there is not enough money to satisfy in full the portion assigned to the litigation financier,
28 you will not owe anything in excess of your recovery.

1 5. You are entitled to a fully completed contract with no terms or conditions omitted prior to
2 signing. Before signing this contract, you should read the contract completely and consult an attorney."

3 (5) If the consumer is represented by a legal representative in the civil action, administrative
4 proceeding, claim, or cause of action that is the subject of the litigation financing contract, the legal
5 representative shall acknowledge in the contract that the legal representative and the legal representative's
6 employer and employees have not received or paid a referral fee or any other consideration from or to the
7 litigation financier and have no obligation to do so in the future.

8 (6) If the consumer's legal representative is a party to a litigation financing contract related to the
9 consumer's civil action, administrative proceeding, claim, or cause of action that is the subject of the litigation
10 financing contract, the legal representative shall disclose and deliver the litigation financing contract to the
11 consumer. Following this disclosure and delivery, the consumer shall sign an acknowledgement that the
12 consumer has read and understands the terms and conditions of the litigation financing contract and the
13 consumer must be provided with a copy of the acknowledgment.

14
15 NEW SECTION. **Section 6. Disclosure and discovery of litigation financing contracts.** (1) Except
16 as otherwise stipulated or ordered by a court of competent jurisdiction, a consumer or the consumer's legal
17 representative shall, without awaiting a discovery request, disclose and deliver to the following persons the
18 litigation financing contract:

19 (a) each party to the civil action, administrative proceeding, claim, or cause of action, or to each
20 party's legal representative;

21 (b) the court, agency, or tribunal in which the civil action, administrative proceeding, claim, or
22 cause of action may be pending; and

23 (c) any known person, including an insurer, with a preexisting contractual obligation to indemnify
24 or defend a party to the civil action, administrative proceeding, claim, or cause of action.

25 (2) The disclosure obligation under subsection (1) exists regardless of whether a civil action or an
26 administrative proceeding has commenced.

27 (3) The disclosure obligation under subsection (1) is a continuing obligation, and within 30 days of
28 entering into a litigation financing contract or amending an existing litigation financing contract, the consumer or

1 the consumer's legal representative shall disclose and deliver any new or amended litigation financing
2 contracts.

3 (4) The existence of the litigation financing contract and all participants or parties to a litigation
4 financing contract are permissible subjects of discovery in any civil action, administrative proceeding, claim, or
5 cause of action to which litigation financing is provided under the litigation financing contract, regardless of
6 whether a civil action or an administrative proceeding has commenced.

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8 **NEW SECTION. Section 7. Exemptions.** [Sections 1 through 11] do not apply to the following:

9 (1) a nonprofit entity that provides litigation financing, directly or indirectly, for the benefit of one or
10 more of its members without receiving, in consideration for the litigation financing:

11 (a) the payment of interest, fees, or other consideration; and

12 (b) any right to recovery or payment from the amount of any judgment, award, settlement, verdict,
13 or other form of monetary relief obtained in the civil action, administrative proceeding, claim, or cause of action;
14 or

15 (2) any litigation financing provided by an entity engaged in commerce or business activity, but
16 only if the entity does not:

17 (a) charge or collect any interest, fees, or other consideration;

18 (b) retain or receive any financial interest in the outcome of the civil action, administrative
19 proceeding, claim, or cause of action; and

20 (c) receive any right to recovery or payment from the amount of any judgment, award, settlement,
21 verdict, or other form of monetary relief obtained in the civil action, administrative proceeding, claim, or cause of
22 action.

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24 **NEW SECTION. Section 8. Class actions.** [Sections 1 through 11] apply to any civil action filed or
25 certified as a class action in which litigation financing is provided. A litigation financier owes a fiduciary duty to
26 all class members or intended beneficiaries of a certified class and shall act in a manner consistent with the
27 litigation financier's fiduciary duty throughout the civil action. In addition to the disclosure requirements set forth
28 in [sections 1 through 11], the legal representative of the putative class shall disclose to all parties, putative

1 class members, and the court any legal, financial, or other relationship between the legal representative and the
2 litigation financier. A class member is entitled to receive from the class counsel a true and correct copy of the
3 litigation financing contract on request.

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5 **NEW SECTION. Section 9. Joint and several liability for costs.** A litigation financier is jointly and
6 severally liable for any award or order imposing or assessing costs other than monetary sanctions against a
7 consumer arising from or relating to any civil action, administrative proceeding, claim, or cause of action for
8 which the litigation financier is providing litigation financing.

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10 **NEW SECTION. Section 10. Regulatory oversight -- rulemaking.** The secretary of state is
11 authorized to adopt rules and other policies in overseeing the practice of litigation financing consistent with
12 [sections 1 through 11].

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14 **NEW SECTION. Section 11. Act violation -- unenforceable contract.** (1) Any violation of [sections
15 1 through 11] by the litigation financier renders the litigation financing contract unenforceable by the litigation
16 financier or any successor-in-interest to the litigation financing contract.

17 (2) If a litigation financier charges a rate of interest that exceeds the rate of interest allowed under
18 31-1-107, the litigation financier shall be subject to a penalty for usury and an action to recover excessive
19 interest as authorized under 31-1-108.

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21 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 11] are intended to be
22 codified as a new chapter in Title 31, and the provisions of Title 31 apply to [sections 1 through 11].

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24 **NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are
25 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
26 the part remains in effect in all valid applications that are severable from the invalid applications.

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28 **NEW SECTION. Section 14. Effective date.** [This act] is effective on passage and approval.

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2 NEW SECTION. **Section 15. Applicability.** [This act] applies to any civil action or administrative
3 proceeding pending on or commenced after [the effective date of this act].

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