

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE GENERALLY --
THIRD-PARTY LITIGATION FINANCING CONSUMER PROTECTION ACT

Introduced By: Representative Brian P. Kennedy

Date Introduced: March 01, 2023

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 9 of the General Laws entitled "COURTS AND CIVIL PROCEDURE
2 —PROCEDURE GENERALLY" is hereby amended by adding thereto the following chapter:

3 CHAPTER 3.1

4 THIRD-PARTY LITIGATION FINANCING CONSUMER PROTECTION ACT

5 **9-3.1-1. Short title.**

6 This act shall be known and may be cited as the "Third-Party Litigation Financing
7 Consumer Protection Act".

8 **9-3.1-2. Definitions.**

9 As used in this chapter:

10 (1) "Consumer" means any natural person or persons who resides, is present or is domiciled
11 in this state, or who is or may become a plaintiff or complainant in a lawsuit or other legal dispute
12 in this state.

13 (2) "Legal representative" means an attorney, group of attorneys or law firm who may be
14 entitled to represent a person or persons in a legal dispute in this state.

15 (3) "Litigation financier" means a person, group of persons, or legal entity, engaged in the
16 business of litigation financing or any other mechanism created with the intent of so doing.

17 (4) "Litigation financing" means the funding of litigation activities or related claims by
18 anyone other than the parties to the claim or litigation themselves, their counsel, or entities with a

1 preexisting contractual indemnitor or a liability insurer relationship with one of the parties.
2 Litigation financing includes the purchase of bills, accounts or liens or otherwise paying for or
3 purchasing services rendered related to claims or litigation.

4 (5) "Litigation financing transaction" means a transaction in which litigation financing is
5 provided to a consumer, legal representative, or medical provider in return for assigning to the
6 litigation financier a contingent right to receive an amount or amounts of the potential proceeds of
7 consumer judgments, awards, settlements or verdicts obtained with respect to the consumer's legal
8 claim, or agreeing to pay the litigation financier interest, fees or any other consideration for the
9 financing provided. The term "litigation financing transaction" does not include legal
10 representation services provided to a consumer by a legal representative on a contingency fee basis,
11 or legal costs advanced by a legal representative, where such services or costs are provided to or
12 on behalf of a consumer by a legal representative in the dispute and in accordance with the Rhode
13 Island disciplinary rules of professional conduct.

14 (6) "Medical provider" means any person or business providing medical services of any
15 kind to a consumer, including, but not limited to, physicians, nurse practitioners, hospitals, physical
16 therapists, chiropractors, or radiologists, as well as any of their employees, contractors, practice
17 groups, partnerships or incorporations of the same.

18 **9-3.1-3. Litigation financier - Registration - Bond - Public record.**

19 (a)(1) No litigation financier shall engage in a litigation financing transaction in Rhode
20 Island unless it is registered as a litigation financier in this state.

21 (2) A litigation financier that is a business entity or partnership is registered in this state if:

22 (i) It has a status of active and in good standing as reflected in the records of the secretary
23 of state; and

24 (ii) Its charter, articles of organization, certificate of limited partnership, or other
25 organizational document, or, if a foreign entity, its Rhode Island application for a certificate of
26 authority, contains a statement that it shall be designated as a litigation financier pursuant to this
27 chapter.

28 (3) A litigation financier that is not a business entity or partnership is registered in this state
29 if it files an application for registration as a litigation financier on a form prescribed by the secretary
30 of state, along with a filing fee of one hundred dollars (\$100), that contains the following:

31 (i) Applicant's full legal name;

32 (ii) Business name of applicant, if any;

33 (iii) Physical street address and mailing address of the applicant;

34 (iv) A telephone number through which the applicant can be reached;

1 (v) The name, physical street address, mailing address, and telephone number for a Rhode
2 Island registered agent appointed to accept service of process on behalf of the applicant;

3 (vi) A statement that the applicant shall be designated as a litigation financier pursuant to
4 this chapter; and

5 (vii) Any other information the secretary of state deems necessary.

6 (b) Each litigation financier shall file with the secretary of state a surety bond of not less
7 than fifty thousand dollars (\$50,000). The bond shall be payable to the state for the use of the
8 attorney general and any person who may have a cause of action against the obligor of the bond for
9 any violation of this chapter. The bond shall continue in effect as long as a litigation financier is
10 designated as a litigation financier in the records of the secretary of state.

11 (c) A litigation financier shall amend its registration with the secretary of state under
12 subsection (a) of this section within thirty (30) days whenever the information contained in such
13 record changes or becomes inaccurate or incomplete in any respect. A litigation financier that is not
14 a business entity or partnership may amend its registration with the secretary of state by filing an
15 amendment on a form prescribed by the secretary of state, along with a filing fee of twenty dollars
16 (\$20.00).

17 (d) All documents filed pursuant to this section are public record.

18 **9-3.1-4. Litigation financing protections.**

19 (a) A litigation financier shall not:

20 (1) Pay or offer commissions, referral fees or other forms of consideration to any legal
21 representative, medical provider, or any of their employees for referring a consumer to a litigation
22 financier;

23 (2) Accept any commissions, referral fees, rebates or other forms of consideration from a
24 legal representative, medical provider or any of their employees;

25 (3) Advertise false or misleading information regarding its products or services;

26 (4) Refer a consumer or potential consumer to a specific legal representative, medical
27 provider or any of their employees;

28 (5) Fail to promptly supply copies of any complete litigation financing contracts to the
29 consumer and the consumer's legal representative;

30 (6) Attempt to secure a remedy or obtain a waiver of any remedy, including, but not limited
31 to, compensatory, statutory, or punitive damages, that the consumer might otherwise be or not be
32 entitled to pursue;

33 (7) Attempt to effect arbitration or otherwise effect waiver of a consumer's right to trial by
34 jury;

1 (8) Offer or provide legal advice to the consumer regarding the litigation financing or the
2 underlying dispute;

3 (9) Assign, which includes securitizing, a litigation financing contract in whole or part;

4 (10) Report a consumer to a credit reporting agency if insufficient funds remain from the
5 net proceeds to repay the litigation financier; or

6 (11) Receive or exercise any right to direct, nor make any decisions with respect to, the
7 conduct of the consumer's legal claim or any settlement or resolution thereof. The right to make
8 such decisions shall remain solely with the consumer and his or her legal representative.

9 (b) A legal representative retained by a consumer, or a medical provider for such consumer,
10 or any of their employees shall not have a financial interest in litigation financing and shall not
11 receive a referral fee or other consideration from any litigation financier, its employees, owners or
12 its affiliates.

13 **9-3.1-5. Litigation financing contracts - Disclosures.**

14 (a) The terms of the litigation financing agreement shall be set forth in a written contract
15 that is completely filled in. There shall be no incomplete sections when the contract is offered or
16 presented to the consumer, legal representative, or medical provider.

17 (b) Litigation financing contracts shall contain the disclosures specified in this section,
18 which shall constitute material terms of the litigation financing contract.

19 (c) These disclosures shall be typed in at least fourteen (14) point, bold font and be placed
20 clearly and conspicuously immediately above the consumer's signature line in the litigation
21 financing contract:

22 (1) Consumer's Right to Cancellation: You may cancel this contract without penalty or
23 further obligation within five (5) business days from the date you signed this contract or received
24 financing from [insert name of the litigation financier] by either returning the funds to [insert name,
25 office address and office hours of the litigation financier] or by U.S. mail, [insert name and mailing
26 address of litigation financier]. For return by U.S. mail, the postmark date on the returned funds or,
27 if mailed by registered or certified mail, the date of the return receipt requested shall be the date of
28 return.

29 (2) The fees charged pursuant to this agreement shall not exceed [litigation financier to
30 insert annual interest percentage rate, percentage of award or settlement proceeds, or dollar
31 amount].

32 (3) The litigation financier agrees that it has no right to and will not make any decisions
33 about the conduct of your lawsuit or dispute and that the right to make those decisions remains
34 solely with you and your legal representative;

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

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

8 (d) If the consumer is represented by a legal representative in the dispute that is the subject
9 of the litigation financing contract, the legal representative shall acknowledge in the contract that
10 he or she or their employer or employees have neither received nor paid a referral fee or any other
11 consideration from or to the litigation financier, nor will in the future do so.

12 (e) If the consumer's legal representative is a party to a litigation financing agreement
13 related to the consumer's legal proceeding, the legal representative shall share with the consumer
14 the agreement between the legal representative and the litigation financier. The agreement shall be
15 accompanied by the disclosure required by this section, and the consumer shall sign both an
16 acknowledgement that the agreement has been read and the required disclosure.

17 **9-3.1-6. Disclosure of financing agreements - Discovery.**

18 (a) Except as otherwise stipulated or ordered by the court, a consumer or their legal
19 representative shall, without awaiting a discovery request, provide to all parties to the litigation,
20 including their insurer if prior to litigation, any litigation financing contract or agreement under
21 which anyone, other than a legal representative permitted to charge a contingent fee representing a
22 party, has received or has a right to receive compensation or proceeds from the consumer that are
23 contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or
24 otherwise.

25 (b) The existence of litigation financing, litigation financing transactions and all
26 participants in such financing arrangements are permissible subjects of discovery in all personal
27 injury litigation or matters arising out of personal injuries.

28 **9-3.1-7. Annual report.**

29 (a) Each litigation financier shall file a report annually with the secretary of state in
30 accordance with such procedures as the secretary may require. The report shall contain at least the
31 following:

32 (1) For each person that, directly or indirectly, owns, controls, holds with the power to vote,
33 or holds proxies representing, five percent (5%) or more of the voting securities of the litigation
34 financier:

1 (i) The legal name and address of each person;
2 (ii) If the person is an individual, his or her principal occupation and offices and positions
3 held during the past five (5) years, and any conviction of crimes other than minor traffic violations
4 during the past ten (10) years; and
5 (iii) If the person is not an individual, a report of the nature of its business operations during
6 the past five (5) years or for the lesser period as the person and any predecessors shall have been in
7 existence; a narrative description of the business intended to be done by the person and the person's
8 subsidiaries; and a list of all individuals who are or who have been selected to become directors or
9 executive officers of the person. The list shall include for each individual the information required
10 by subsection (a)(1)(ii) of this section; and
11 (2) For each litigation financing transaction entered in this state or involving a claim to be
12 litigated in this state, the litigation financier shall identify:
13 (i) The amount, date(s) of payment(s), and name and address of each person that received
14 any amount of financing from a litigation financier during the previous calendar year;
15 (ii) The amount, date of payment, and source of payment for all proceeds obtained by the
16 litigation financier during the previous calendar year from any judgment, award, settlement or
17 verdict in a litigation financing transaction; and
18 (iii) Any other information the secretary deems necessary to the administration of justice.
19 (b) Secretary of state reporting obligations
20 (1) The secretary of state shall provide to the house and senate judiciary committees an
21 annual report within six (6) months of the receipt of the information in subsection (a) of this section
22 containing all of the information therein and a summary. This report as filed shall not be
23 made available to the public and shall be confidential by law and privileged, shall not be subject to
24 the
25 provisions of chapter 2 of title 38, shall not be subject to subpoena, and shall not be subject
26 to discovery or admissible in evidence in any private civil action.
27 (2) The secretary of state shall release the report and summary under subsection (b)(1) of
28 this section to the public subject to the removal of all personally identifiable information of any
29 consumer. Nothing in this subsection shall affect the obligation to disclose litigation financing
30 contracts or other agreements under § 9-3.1-6.

31 **9-3.1-8. Class action lawsuits.**

32 This chapter shall apply to any class action. Putative class members and the court shall be
33 advised that the proposed class attorney has a legal or financial relationship with a litigation
34 financier.

1 **9-3.1-9. Commercial litigation exemption - Limitation.**

2 This chapter does not apply to litigation financing provided to commercial enterprises in
3 support of commercial litigation. This exemption does not apply to situations arising from a
4 personal injury claim or an aggregation of personal injury claims, whether by subrogation,
5 assignment, or any other basis.

6 **9-3.1-10. Regulatory oversight.**

7 The practice of litigation financing shall be regulated by the secretary of state. The office
8 of the secretary of state shall adopt rules and regulations consistent with this chapter and its
9 authority under law.

10 **9-3.1-11. Act violation - Unenforceable contract.**

11 Any violation of this chapter shall make the litigation financing contract unenforceable by
12 the litigation financier, the consumer, or any successor-in-interest to the litigation financing
13 contract.

14 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE GENERALLY --
THIRD-PARTY LITIGATION FINANCING CONSUMER PROTECTION ACT

- 1 This act would comprehensively regulate the practices of third-party litigation financiers in
- 2 Rhode Island to provide transparency in litigation.
- 3 This act would take effect upon passage.

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