

Senate Study Bill 3150 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act regulating litigation financing contracts, and including
2 effective date and applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 537C.1 Title.

2 This chapter shall be known as the "*Litigation Financing*
3 *Transparency and Consumer Protection Act*".

4 Sec. 2. NEW SECTION. 537C.2 Definitions.

5 As used in this chapter, unless otherwise required by the
6 context:

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

12 2. "*Entity*" means any domestic or foreign corporation,
13 partnership, limited partnership, limited liability company,
14 trust, fund, plan, or any other business, enterprise,
15 association, or organization of any kind or nature.

16 3. "*Legal representative*" means any attorney, group
17 of attorneys, or law firm duly licensed and authorized to
18 practice law and to represent a consumer in a civil action,
19 administrative proceeding, or claim to recover damages in this
20 state.

21 4. "*Litigation financier*" means any person or group of
22 persons engaged in, formed, created, or established for the
23 purpose of engaging in the business of litigation financing or
24 any other business or economic activity in which a person or
25 group of persons receive consideration of any kind in exchange
26 for providing litigation financing.

27 5. "*Litigation financing*" means the financing, funding,
28 advancing, or loaning of money to pay fees, costs, expenses, or
29 any other sums arising from or in any manner related to a civil
30 action, administrative proceeding, claim, or cause of action,
31 if the financing, funding, advancing, or loaning of money is
32 provided by any person other than a person who is any of the
33 following:

34 a. A party to the civil action, administrative proceeding,
35 claim, or cause of action.

1 **b.** A legal representative engaged, directly or indirectly
2 through another legal representative, to represent a party in
3 a civil action, administrative proceeding, claim, or cause of
4 action.

5 **c.** An entity or insurer with a preexisting contractual
6 obligation to indemnify or defend a party in a civil action,
7 administrative proceeding, claim, or cause of action.

8 **6. a.** "*Litigation financing contract*" means a written
9 contract in which a person agrees to provide litigation
10 financing to any person in conjunction with a civil action or
11 an administrative proceeding or in pursuit of any claim or
12 cause of action in consideration for any of the following:

13 (1) The payment of interest, fees, or other consideration to
14 the person providing the litigation financing.

15 (2) Granting or assigning to the person providing the
16 litigation financing a right to receive payment from the
17 value of any proceeds or other consideration realized from
18 any judgment, award, settlement, verdict, or other form of
19 monetary relief any consumer, legal representative, or other
20 person may receive or recover in relation to the civil action,
21 administrative proceeding, claim, or cause of action.

22 **b.** "*Litigation financing contract*" does not include any
23 agreement, contract, or engagement of a legal representative
24 to render legal services to a consumer on a contingency fee
25 basis, including the advancement of legal costs by the legal
26 representative, in which the services or costs are provided
27 to or on behalf of a consumer by the legal representative
28 representing the consumer in the civil action, administrative
29 proceeding, claim, or cause of action.

30 **7.** "*Person*" means an individual or an entity.

31 **8.** "*Regulated lender*" means any of the following:

32 **a.** A bank, building and loan association, savings and loan
33 association, trust company, credit union, credit association,
34 consumer loan licensee, deferred deposit loan licensee,
35 residential mortgage lender licensee, development corporation,

1 bank holding company, or mutual or stock insurance company
2 organized pursuant to state or federal statutory authority and
3 subject to supervision, control, or regulation by any of the
4 following:

5 (1) An agency of the state of Iowa.

6 (2) An agency of the federal government.

7 *b.* A subsidiary of an entity described in paragraph "a".

8 *c.* An Iowa state agency or a federal agency that is
9 authorized to lend money.

10 *d.* A corporation or other entity established by congress or
11 the state of Iowa that is owned, in whole or in part, by the
12 United States or the state of Iowa and that is authorized to
13 lend money.

14 Sec. 3. NEW SECTION. 537C.3 Registration.

15 1. A person shall not engage in litigation financing in this
16 state unless the person is registered with the secretary of
17 state as a litigation financier pursuant to this chapter.

18 2. If the person registering as a litigation financier is an
19 entity:

20 *a.* The entity must be active and in good standing as
21 reflected in the office of the secretary of state.

22 *b.* The entity's articles of incorporation, charter, articles
23 of organization, certificate of limited partnership, or other
24 organizational or governing document must contain a statement
25 that the entity has the power to engage in the business of
26 litigation financing and is designated as a litigation financier
27 pursuant to this chapter.

28 3. To register as a litigation financier, a person shall file
29 a registration statement with the secretary of state setting
30 forth all of the following information:

31 *a.* The legal name of the litigation financier.

32 *b.* The physical street address and mailing address of the
33 litigation financier.

34 *c.* A telephone number or electronic mail address through
35 which the litigation financier may be contacted.

1 *d.* The physical street address and mailing address of the
2 licensed financier's registered office and the name of the
3 registered agent at the registered office who is authorized to
4 accept service of process on behalf of the licensed financier.

5 *e.* Any other information the secretary of state considers
6 necessary.

7 4. If the person seeking to register as a litigation
8 financier is an entity, the following information must be set
9 forth in the registration statement with respect to each person
10 that, directly or indirectly, owns, controls, holds with the
11 power to vote, or holds proxies representing five percent or
12 more of the voting securities of the litigation financier:

13 *a.* The legal name, physical street address, and mailing
14 address of each person.

15 *b.* If the person is an individual, all of the following:

16 (1) The individual's occupation.

17 (2) Any offices and positions held with the litigation
18 financier during the past five years.

19 (3) Any conviction of a crime other than misdemeanor traffic
20 violations during the past ten years.

21 *c.* If the person is an entity, all of the following:

22 (1) The nature of the entity's business operations, if
23 any, during the past five years or a description of the
24 business intended to be done by the entity and the entity's
25 subsidiaries, if any.

26 (2) A list of all individuals who are or who have been
27 selected to become directors or officers of the entity and
28 each subsidiary of the entity. The list must include for each
29 individual the information required by paragraph "b".

30 5. A litigation financier subject to registration under this
31 chapter shall file an amended registration within thirty days
32 whenever the information contained in the most recently filed
33 registration changes or becomes inaccurate or incomplete in any
34 respect.

35 6. The secretary of state is authorized to prescribe the

1 forms and the filing fees the secretary of state considers
2 necessary for the purposes of this chapter.

3 7. All documents and information filed with the secretary of
4 state pursuant to this section are public records.

5 8. The secretary of state's duty to file documents under
6 this section is ministerial. The secretary of state's filing
7 or refusing to file a document does not create a presumption
8 of any of the following:

9 a. That the document does or does not conform to the
10 requirements of this chapter.

11 b. That the information contained in the document is correct
12 or incorrect.

13 Sec. 4. NEW SECTION. 537C.4 **Litigation financing**
14 **protections.**

15 1. A litigation financier shall not do any of the following:

16 a. Pay or offer commissions, referral fees, rebates, or
17 other forms of consideration to any person in exchange for
18 referring a consumer to a litigation financier.

19 b. Accept any commissions, referral fees, rebates, or other
20 forms of consideration from any person providing any goods or
21 rendering any services to the consumer.

22 c. Charge a rate of interest that exceeds the rate of
23 interest allowed under chapter 535.

24 d. Receive or recover any payment that exceeds twenty-five
25 percent of the amount of any judgment, award, settlement,
26 verdict, or other form of monetary relief obtained in the civil
27 action, administrative proceeding, claim, or cause of action
28 that is the subject of the litigation contract.

29 e. Advertise false or misleading information regarding the
30 litigation financier's products or services.

31 f. Refer or require any consumer to hire or engage any
32 person providing any goods or rendering any services to the
33 consumer.

34 g. Fail to promptly deliver a fully completed and signed
35 litigation financing contract to the consumer and the

1 consumer's legal representative.

2 *h.* Attempt to secure a remedy or obtain a waiver of any
3 remedy, including but not limited to compensatory, statutory,
4 or punitive damages, that the consumer may or may not be
5 entitled to pursue or recover otherwise.

6 *i.* Offer or provide legal advice to the consumer.

7 *j.* Assign, including securitizing, a litigation financing
8 contract in whole or in part.

9 *k.* Report a consumer to a credit reporting agency if
10 insufficient funds remain to repay the litigation financier
11 in full from the proceeds received from any judgment, award,
12 settlement, verdict, or other form of monetary relief obtained
13 in the civil action, administrative proceeding, claim, or cause
14 of action that is the subject of the litigation financing
15 contract.

16 *l.* Demand, request, receive, or exercise any right to
17 influence, affect, or otherwise make any decision in the
18 handling, conduct, administration, litigation, settlement, or
19 resolution of any civil action, administrative proceeding,
20 claim, or cause of action in which the litigation financier has
21 provided litigation financing. All rights remain solely with
22 the consumer and the consumer's legal representative.

23 2. A person who provides any goods or renders any services
24 to the consumer shall not have a financial interest in
25 litigation financing and shall not receive any commissions,
26 referral fees, rebates, or other forms of consideration from
27 any litigation financier or the litigation financier's employees,
28 owners, or affiliates.

29 **Sec. 5. NEW SECTION. 537C.5 Litigation financing contract**
30 **— disclosures.**

31 1. The terms and conditions of a litigation financing
32 contract must be set forth in a fully completed written
33 contract with no terms or conditions omitted. The litigation
34 financing contract must contain all terms and conditions at
35 the time it is signed by any party to the litigation financing

1 contract.

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

7 3. A litigation financing contract must set forth the name,
8 physical street address, and mailing address of the litigation
9 financier on the first page of the litigation financing
10 contract.

11 4. A litigation financing contract must contain the
12 following disclosures that constitute material terms and
13 conditions of the litigation financing contract and must be
14 typed in at least fourteen point bold font and be placed
15 clearly and conspicuously immediately above the consumer's
16 signature line in the litigation financing contract:

17 **IMPORTANT DISCLOSURES — PLEASE READ CAREFULLY**

18 **Right to Cancellation:** You may cancel this litigation
19 financing contract without penalty or further obligation within
20 five business days from the date you sign this contract or
21 the date you receive financing from the litigation financier,
22 whichever date is later. You may cancel by sending a notice
23 of cancellation to the litigation financier and returning to
24 the litigation financier any funds received from the litigation
25 financier at the litigation financier's address set forth on the
26 first page of this contract.

27 The maximum amount the litigation financier may receive or
28 recover from any contingent payment shall not exceed twenty
29 five percent of the amount of any judgment, award, settlement,
30 verdict, or other form of monetary relief obtained in the civil
31 action, administrative proceeding, claim, or cause of action
32 that is the subject of this litigation contract.

33 The litigation financier agrees that it has no right to,
34 and will not demand, request, receive, or exercise any right
35 to, influence, affect, or otherwise make any decision in the

1 handling, conduct, administration, litigation, settlement, or
2 resolution of your civil action, administrative proceeding,
3 claim, or cause of action. All of these rights remain solely
4 with you and your legal representative.

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

10 You are entitled to a fully completed contract with no terms
11 or conditions omitted prior to signing. Before signing this
12 contract, you should read the contract completely and consult
13 an attorney.

14 5. If the consumer is represented by a legal representative
15 in the civil action, administrative proceeding, claim, or cause
16 of action that is the subject of the litigation financing
17 contract, the legal representative shall acknowledge in
18 the contract that the legal representative and the legal
19 representative's employer and employees have not received or
20 paid a referral fee or any other consideration from or to the
21 litigation financier and have no obligation to do so in the
22 future.

23 6. If the consumer's legal representative is a party to a
24 litigation financing contract related to the consumer's civil
25 action, administrative proceeding, claim, or cause of action
26 that is the subject of the litigation financing contract, the
27 legal representative shall disclose and deliver the litigation
28 financing contract to the consumer. Following this disclosure
29 and delivery, the consumer shall sign an acknowledgment that
30 the consumer has read and understands the terms and conditions
31 of the litigation financing contract and the consumer must be
32 provided with a copy of the acknowledgment.

33 **Sec. 6. NEW SECTION. 537C.6 Disclosure and discovery of**
34 **litigation financing contracts.**

35 1. Except as otherwise stipulated or ordered by the court, a

1 consumer or the consumer's legal representative shall, without
2 awaiting a discovery request, disclose and deliver to all of
3 the following persons the litigation financing contract:

4 *a.* Each party to the civil action, administrative
5 proceeding, claim, or cause of action, or to each party's legal
6 representative.

7 *b.* The court, agency, or tribunal in which the civil action,
8 administrative proceeding, claim, or cause of action may be
9 pending.

10 *c.* Any known person, including an insurer, with a
11 preexisting contractual obligation to indemnify or defend a
12 party to the civil action, administrative proceeding, claim,
13 or cause of action.

14 2. The disclosure obligation under subsection 1 exists
15 regardless of whether a civil action or an administrative
16 proceeding has commenced.

17 3. The disclosure obligation under subsection 1 is a
18 continuing obligation, and within thirty days of entering
19 into a litigation financing contract or amending an existing
20 litigation financing contract, the consumer or the consumer's
21 legal representative shall disclose and deliver any new or
22 amended litigation financing contracts.

23 4. The existence of the litigation financing contract
24 and all participants or parties to a litigation financing
25 contract are permissible subjects of discovery in any civil
26 action, administrative proceeding, claim, or cause of action
27 to which litigation financing is provided under the litigation
28 financing contract, regardless of whether a civil action or an
29 administrative proceeding has commenced.

30 Sec. 7. NEW SECTION. 537C.7 Exemptions.

31 This chapter does not apply to any of the following:

32 1. A nonprofit organization that provides litigation
33 financing, directly or indirectly, for the benefit of the
34 nonprofit organization or one or more of the nonprofit
35 organization's members without receiving, in consideration for

1 the litigation financing, any of the following:

2 *a.* The payment of interest, fees, or other consideration.

3 *b.* Except for in-house counsel of the nonprofit
4 organization, any right to recovery or payment from the amount
5 of any judgment, award, settlement, verdict, or other form of
6 monetary relief obtained in the civil action, administrative
7 proceeding, claim, or cause of action.

8 2. Any litigation financing provided by an entity engaged in
9 commerce or business activity, but only if the entity does not
10 do any of the following:

11 *a.* Charge or collect any interest, fees, or other
12 consideration.

13 *b.* Retain or receive any financial interest in the outcome
14 of the civil action, administrative proceeding, claim, or cause
15 of action.

16 *c.* Receive any right to recovery or payment from the amount
17 of any judgment, award, settlement, verdict, or other form of
18 monetary relief obtained in the civil action, administrative
19 proceeding, claim, or cause of action.

20 3. A regulated lender that does not receive, in
21 consideration for loaning money to any person, a right to
22 receive payment from the value of any proceeds or other
23 consideration realized from any judgment award, settlement,
24 verdict, or other form of monetary relief any person
25 may receive or recover in relation to any civil action,
26 administrative proceeding, claim, or cause of action.

27 Sec. 8. NEW SECTION. 537C.8 **Class actions.**

28 This chapter shall apply to any civil action filed or
29 certified as a class action in which litigation financing
30 is provided. A litigation financier owes a fiduciary
31 duty to all class members or intended beneficiaries of a
32 certified class and shall act in a manner consistent with the
33 litigation financier's fiduciary duty throughout the civil
34 action. In addition to the disclosure requirements, the
35 legal representative of the putative class shall disclose

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

6 Sec. 9. NEW SECTION. **537C.9 Joint and several liability for**
7 **costs.**

8 A litigation financier is jointly and severally liable for
9 any award or order imposing or assessing costs or monetary
10 sanctions against a consumer arising from or relating to any
11 civil action, administrative proceeding, claim, or cause
12 of action for which the litigation financier is providing
13 litigation financing.

14 Sec. 10. NEW SECTION. **537C.10 Regulatory oversight —**
15 **rulemaking.**

16 The secretary of state may adopt rules and other policies in
17 overseeing the practice of litigation financing consistent with
18 this chapter.

19 Sec. 11. NEW SECTION. **537C.11 Violation — unenforceable**
20 **contract.**

21 1. Any violation of this chapter by the litigation financier
22 renders the litigation financing contract unenforceable by
23 the litigation financier or any successor-in-interest to the
24 litigation financing contract.

25 2. If a litigation financier charges a rate of interest that
26 exceeds the rate of interest allowed under chapter 535, the
27 litigation financier shall be subject to a penalty for usury and
28 an action to recover excessive interest as authorized under
29 chapter 535.

30 Sec. 12. **EFFECTIVE DATE.** This Act takes effect January 1,
31 2025.

32 Sec. 13. **APPLICABILITY.** This Act applies to any civil
33 action or administrative proceeding involving a litigation
34 financier pending on or commenced on or after January 1, 2025.

35

EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 This bill creates the litigation financing transparency and
4 consumer protection Act.

5 The bill requires the registration of litigation financiers
6 with the secretary of state. The bill provides registration
7 requirements and procedures for the litigation financier. The
8 bill provides that all documents and information filed with the
9 secretary of state pursuant to the registration of the litigation
10 financier are public records.

11 The bill provides limitations on how a litigation financier
12 may conduct business. A litigation financier may not (1) pay or
13 offer any form of consideration to any person in exchange for
14 referring a consumer to a litigation financier, (2) accept any
15 type of consideration from any person providing any goods or
16 rendering any services to the consumer, (3) charge a rate of
17 interest that exceeds the rate of interest allowed under Code
18 chapter 535 (money and interest), (4) receive or recover any
19 payment that exceeds 25 percent of the reward obtained in the
20 action subject to the litigation contract, (5) advertise false
21 or misleading information regarding the litigation financier
22 products or services, (6) refer or require any consumer to
23 hire or engage any person providing any goods or rendering
24 any services to the consumer, (7) fail to promptly deliver
25 a fully completed and signed litigation financing contract
26 to the consumer and the consumer's legal representative, (8)
27 attempt to secure a remedy or obtain a waiver of any remedy,
28 including but not limited to compensatory, statutory, or
29 punitive damages, (9) offer or provide legal advice to the
30 consumer, (10) assign a litigation financing contract in whole
31 or in part, (11) report a consumer to a credit reporting
32 agency, or (12) demand, request, receive, or exercise any right
33 to influence, affect, or otherwise make any decision in the
34 handling, conduct, administration, litigation, settlement, or
35 resolution of any civil action, administrative proceeding,

1 claim, or cause of action in which the litigation financier has
2 provided litigation financing. The bill also provides that a
3 person who provides any goods or renders any services to the
4 consumer shall not have a financial interest in litigation
5 financing.

6 The bill provides the terms, conditions, and disclosures
7 required in a litigation financier contract. Upon execution
8 of the contract, the litigation financier may not amend any
9 terms or conditions of the contract without full disclosure and
10 written consent of all parties.

11 The bill provides that a consumer or legal representative
12 of a consumer, unless otherwise stipulated or ordered by the
13 court, shall disclose and deliver the litigation financing
14 contract to each party of the matter, the court, and any known
15 person with a contractual obligation in the matter.

16 The bill provides exemptions to the new Code chapter,
17 including: (1) a nonprofit organization that provides
18 litigation financing for the benefit of the nonprofit
19 organization or one or more of the nonprofit organization's
20 members; (2) an entity engaged in commerce or business
21 activity, but only if the entity does not: charge or collect
22 any interest, fees, or other consideration; retain or receive
23 any financial interest in the outcome of the civil action,
24 administrative proceeding, claim, or cause of action; and
25 receive any right to recovery or payment from the amount of any
26 judgment, award, settlement, verdict, or other form of monetary
27 relief obtained in the matter; or (3) a regulated lender that
28 does not receive a right to receive payment from the value of
29 any proceeds or other consideration realized from any reward
30 received or recovered in relation to the matter.

31 The bill provides that the new Code chapter applies to class
32 actions.

33 The bill provides that a litigation financier is jointly and
34 severally liable for any award or order imposing or assessing
35 costs or monetary sanctions against a consumer arising from

1 or relating to matters for which the litigation financier is
2 providing litigation financing.

3 The bill authorizes the secretary of state to adopt rules or
4 other policies to enforce the new Code chapter.

5 The bill provides that any violation of the new Code chapter
6 by the litigation financier shall render the contract void and
7 may be subject to penalties.

8 The bill takes effect on January 1, 2025, and applies to
9 any civil action or administrative proceeding involving a
10 litigation financier pending on or commenced after January 1,
11 2025.