Senate Study Bill 1122 - Introduced

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

A BILL FOR

An Act regulating litigation financing contracts, and including effective date and applicability provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. <u>NEW SECTION</u>. **537C.1 Title.**

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

Sec. 2. <u>NEW SECTION</u>. **537C.2 Definitions.**

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

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. "*Foreign country of concern*" means a foreign government listed in 15 C.F.R. §7.4.

4. "*Foreign entity of concern*" means a partnership, association, corporation, organization, or other combination of persons that is any of the following:

a. Organized or incorporated in a foreign country of concern.

b. Owned or controlled by the government, a political subdivision, or a political party of a foreign country of concern.

c. That has a principal place of business in a foreign country of concern.

d. That is owned, organized, or controlled by or affiliated with a foreign organization that has been:

(1) Placed on the federal office of foreign assets control specially designated nationals and blocked persons list.

(2) Designated by the United States secretary of state as a foreign terrorist organization.

5. "*Foreign person*" means any of the following:

a. An individual who is not a citizen of the United States or an alien lawfully admitted for permanent residence in the United

States.

b. An unincorporated association, of which a majority of members are not citizens of the United States or aliens lawfully admitted for permanent residence in the United States.

c. A corporation that is not incorporated in the United States.

d. The government, a political subdivision, or a political party of a country other than the United States.

e. An entity that is organized under the laws of a country other than the United States.

f. An entity that has a principal place of business in a country other than the United States and that has shares or other ownership interest held by the government or a government official of a country other than that of the United States.

g. An employee, official, or member of any entity described in paragraphs "*b*" through "*f*".

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

7. "*Litigation financer*" means any person or group of persons engaged in, formed, created, or established for the purpose of engaging in the business of litigation financing or any other business or economic activity in which a person or group of persons receive consideration of any kind in exchange for providing litigation financing.

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

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

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

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

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

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

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

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

10. "*Person*" means an individual or an entity.

11. "*Regulated lender*" means any of the following:

a. A bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, deferred deposit loan licensee, residential mortgage lender licensee, development corporation, bank holding company, or mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by any of the following:

(1) An agency of the state of Iowa.

(2) An agency of the federal government.

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

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

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

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

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

2. If the person registering as a litigation financer is an entity:

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

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

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

a. The legal name of the litigation financer.

b. The physical street address and mailing address of the litigation financer.

c. A telephone number or electronic mail address through which the litigation financer may be contacted.

d. The physical street address and mailing address of the licensed financer's registered office and the name of the registered agent at the registered office who is authorized to accept service of process on behalf of the licensed financer.

e. Any other information the secretary of state considers necessary.

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

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

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

(1) The individual's occupation.

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

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

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

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

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

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

6. The secretary of state is authorized to prescribe the

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

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

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

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

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

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

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

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

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

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

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

e. Advertise false or misleading information regarding the litigation financer's products or services.

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

g. Fail to promptly deliver a fully completed and signed litigation financing contract to the consumer and the consumer's legal representative.

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

i. Offer or provide legal advice to the consumer.

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

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

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

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

Sec. 5. <u>NEW SECTION</u>. **537C.5 Litigation financing contract —— disclosures.**

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

2. On execution of a litigation financing contract, a litigation financer shall not amend the terms or conditions of

the litigation financing contract without full disclosure to and the prior written consent of all parties to the litigation financing contract.

3. A litigation financing contract must set forth the name, physical street address, and mailing address of the litigation financer on the first page of the litigation financing contract.

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

IMPORTANT DISCLOSURES —— PLEASE READ CAREFULLY

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

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

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

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

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

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

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

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

1. *a.* Except as otherwise stipulated or ordered by the court, a consumer or the consumer's legal representative shall, without awaiting a discovery request, disclose and deliver to all of the following persons the litigation financing contract:

(1) Each party to the civil action, administrative

proceeding, claim, or cause of action, or to each party's legal representative.

(2) The court, agency, or tribunal in which the civil action, administrative proceeding, claim, or cause of action may be pending.

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

b. The disclosure obligation under paragraph "*a*" exists regardless of whether a civil action or an administrative proceeding has commenced.

c. The disclosure obligation under paragraph "*a*" is a continuing obligation, and within thirty days of entering into a litigation financing contract or amending an existing litigation financing contract, the consumer or the consumer's legal representative shall disclose and deliver any new or amended litigation financing contracts.

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

2. *a.* In a civil proceeding in which a plaintiff enters into a litigation financing contract that is directly or indirectly financed by a foreign person, the plaintiff or the plaintiff's attorney shall provide a written notice that the plaintiff has entered into a litigation financing contract to all of the following:

(1) Any other party in the civil proceeding.

(2) Each insurer that has a duty to defend another party in the civil proceeding.

b. A plaintiff or the plaintiff's attorney shall provide the written notice required by paragraph "*a*" within a reasonable time after the date on which the litigation financing contract was executed.

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

This chapter does not apply to any of the following:

1. A nonprofit organization that provides litigation financing, directly or indirectly, for the benefit of the nonprofit organization or one or more of the nonprofit organization's members without receiving, in consideration for the litigation financing, any of the following:

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

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

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

a. Charge or collect any interest, fees, or other consideration.

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

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

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

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

This chapter shall apply to any civil action filed or certified as a class action in which litigation financing is provided. A litigation financer owes a fiduciary duty to all class members or intended beneficiaries of a certified class and shall act in a manner consistent with the litigation financer's fiduciary duty throughout the civil action. In addition to the disclosure requirements, the legal representative of the putative class shall disclose to all parties, putative class members, and the court any legal, financial, or other relationship between the legal representative and the litigation financer. A class member is entitled to receive from the class counsel a true and correct copy of the litigation financing contract on request.

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

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

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

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

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

1. Any violation of this chapter by the litigation financer renders the litigation financing contract unenforceable by the litigation financer or any successor-in-interest to the litigation financing contract.

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

chapter 535.

Sec. 12. NEW SECTION. **537C.12 Foreign entity litigation financer.**

A litigation financer shall not provide funding to a litigation financing contract that is directly or indirectly financed by a foreign entity of concern.

Sec. 13. EFFECTIVE DATE. This Act takes effect January 1, 2026.

Sec. 14. APPLICABILITY. This Act applies to any civil action or administrative proceeding involving a litigation financer pending on or commenced on or after January 1, 2026.

EXPLANATION

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

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

The bill requires the registration of litigation financers with the secretary of state. The bill provides registration requirements and procedures for the litigation financer. The bill provides that all documents and information filed with the secretary of state pursuant to the registration of the ligation financer are public records.

The bill provides limitations on how a litigation financer may conduct business. A litigation financer may not (1) pay or offer any form of consideration to any person in exchange for referring a consumer to a litigation financer, (2) accept any type of consideration from any person providing any goods or rendering any services to the consumer, (3) charge a rate of interest that exceeds the rate of interest allowed under Code chapter 535 (money and interest), (4) receive or recover any payment that exceeds 25 percent of the reward obtained in the action subject to the litigation contract, (5) advertise false or misleading information regarding the litigation financer products or services, (6) refer or require any consumer to hire or engage any person providing any goods or rendering any services to the consumer, (7) fail to promptly deliver a fully completed and signed litigation financing contract to the consumer and the consumer's legal representative, (8) attempt to secure a remedy or obtain a waiver of any remedy, including but not limited to compensatory, statutory, or punitive damages, (9) offer or provide legal advice to the consumer, (10) assign a litigation financing contract in whole or in part, (11) report a consumer to a credit reporting agency, or (12) demand, request, receive, or exercise any right to influence, affect, or otherwise make any decision in the handling, conduct, administration, litigation, settlement, or resolution of any civil action, administrative proceeding, claim, or cause of action in which the litigation financer has provided litigation financing. The bill also provides that a person who provides any goods or renders any services to the consumer shall not have a financial interest in litigation financing.

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

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

The bill requires the plaintiff or the plaintiff's attorney to provide written notice of a commercial litigation financing contract to any party in the matter and each insurer with a duty to defend a party in the matter if the contract is directly or indirectly financed by a foreign person.

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

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

The bill provides that a litigation financer is jointly and severally liable for any award or order imposing or assessing costs or monetary sanctions against a consumer arising from or relating to matters for which the litigation financer is providing litigation financing.

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

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

The bill provides that a commercial litigation financer shall not provide funding to a commercial litigation financing contract that is financed by a foreign entity of concern.

The bill takes effect on January 1, 2026, and applies to any civil action or administrative proceeding involving a litigation financer pending on or commenced after January 1, 2026.