

LC004731

IN GENERAL ASSEMBLY

RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS --
THIRD-PARTY LITIGATION FINANCING CONSUMER PROTECTION ACT

Referred To: Senate Judiciary

1 SECTION 1. Title 6 of the General Laws entitled "COMMERCIAL LAW — GENERAL
2 REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

6-26.2-1. Short title.

As used in this chapter:

(5) "Litigation financier" means a person, group of persons, or legal entity, engaged in the

1 business of litigation financing or any other mechanism created with the intent of so doing.

2 (6) "Litigation financing" means the funding of litigation activities or related claims by
3 anyone other than the parties to the claim or litigation themselves, their counsel, or entities with a
4 preexisting contractual indemnitor or a liability insurer relationship with one of the parties.
5 Litigation financing includes the purchase of bills, accounts or liens or otherwise paying for or
6 purchasing services rendered related to claims or litigation.

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

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

21 **6-26.2-3. Litigation financier - Registration - Bond - Public record.**

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

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

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

27 (ii) Its charter, articles of organization, certificate of limited partnership, or other
28 organizational document, or, if a foreign entity, its Rhode Island application for a certificate of
29 authority, to do business in this state, contains a statement that it shall be designated as a litigation
30 financier pursuant to this chapter; and

31 (iii) It files a copy of the regulation on file with the secretary of state pursuant to subsection
32 (a)(2)(i) of this section with the department.

33 (3) A litigation financier that is not a business entity or partnership is registered in this state
34 if it files an application for registration as a litigation financier on a form prescribed by the

1 department, along with a filing fee of one hundred dollars (\$100), that contains the following:

2 (i) Applicant's full legal name;

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

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

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

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

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

10 (vii) Any other information the department deems necessary.

11 (b) Each litigation financier shall file with the department a surety bond of not less than
12 fifty thousand dollars (\$50,000). The bond shall be payable to this state for the use of the attorney
13 general and any person who may have a cause of action against the obligor of the bond for any
14 violation of this chapter. The bond shall continue in effect as long as a litigation financier is
15 registered as a litigation financier pursuant to the provisions of subsection (a) of this section.

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

22 (d) All documents filed pursuant to this section shall be a public record.

23 **6-26.2-4. Litigation financing protections.**

24 (a) A litigation financier shall not:

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

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

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

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

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

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

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

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

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

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

11 (11) Receive or exercise any right to direct, or make any decisions with respect to, the
12 conduct of the consumer's legal claim or any settlement or resolution thereof. The right to make
13 such decisions shall remain solely with the consumer and their legal representative.

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

18 **6-26.2-5. Litigation financing contracts - Disclosures.**

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

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

24 (c) These disclosures shall be typed in at least fourteen (14) point, bold font and be placed
25 clearly and conspicuously immediately above the consumer's signature line in the litigation
26 financing contract. The disclosures are as is follows:

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

34 (2) The fees charged pursuant to this agreement shall not exceed [litigation financier to

insert annual interest percentage rate, percentage of award or settlement proceeds, or dollar amount];

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

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

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

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

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

6-26.2-6. Disclosure of financing agreements – Discovery.

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

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

6-26.2-7. Annual reporting.

(a) Each litigation financier shall file a report annually with the department in accordance

1 with such procedures as the director mandates. The report shall contain at least the following:

2 (1) For each person that, directly or indirectly, owns, controls, holds with the power to vote,

3 or holds proxies representing, five percent (5%) or more of the voting securities of the litigation

4 financer:

5 (i) The legal name and address of each person;

6 (ii) If the person is an individual, their principal occupation and offices and positions held

7 during the past five (5) years, and any conviction of crimes other than minor traffic violations

8 during the past ten (10) years; and

9 (iii) If the person is not an individual, a report of the nature of its business operations during

10 the past five (5) years or for the lesser period as the person and any predecessors shall have been in

11 existence; a narrative description of the business intended to be done by the person and the person's

12 subsidiaries; and a list of all individuals who are or who have been selected to become directors or

13 executive officers of the person. The list shall include for each individual the information required

14 by subsection (a)(2) of this section.

15 (2) For each litigation financing transaction entered in this state or involving a claim to be

16 litigated in this state, the litigation financer shall identify:

17 (i) The amount, date(s) of payment(s), and name and address of each person that received

18 any amount of financing from a litigation financer during the previous calendar year;

19 (ii) The amount, date of payment, and source of payment for all proceeds obtained by the

20 litigation financer during the previous calendar year from any judgment, award, settlement or

21 verdict in a litigation financing transaction; and

22 (iii) Any other information the department deems necessary for the administration of

23 justice.

24 (b) Director reporting obligations:

25 (1) The director shall provide to the house and senate judiciary committees an annual report

26 within six (6) months of the receipt of the information in subsection (a) of this section, containing

27 all of the information therein and a summary. This report as filed shall not be made available to the

28 public and shall be confidential by law and privileged, shall not be subject to the provisions of

29 chapter 2 of title 38 ("public records"), shall not be subject to subpoena, and shall not be subject to

30 discovery or admissible in evidence in any private civil action.

31 (2) The director shall release the report and summary required pursuant to subsection (b)(1)

32 of this section to the public subject to the removal of all personally identifiable information of any

33 consumer. Nothing in this subsection shall affect the obligation to disclose litigation financing

34 contracts or other agreements under § 6-26.2-6.

1 **6-26.2-8. Class action lawsuits.**

2 This chapter shall apply to any class action. Putative class members and the court shall be
3 advised that the proposed class attorney has a legal or financial relationship with a litigation
4 financer.

5 **6-26.2-9. Commercial litigation exemption - Limitation.**

6 This chapter shall not apply to litigation financing provided to commercial enterprises in
7 support of commercial litigation. This exemption does not apply to situations arising from a
8 personal injury claim or an aggregation of personal injury claims, whether by subrogation,
9 assignment, or any other basis.

10 **6-26.2-10. Regulatory oversight.**

11 The practice of litigation financing shall be regulated by the director. The director shall
12 promulgate rules and regulations to implement and enforce the provisions of this chapter.

13 **6-26.2-11. Act violation - Unenforceable contract.**

14 Any violation of this chapter or the rules and regulations promulgated pursuant to § 6-26.2-
15 10 shall make the litigation financing contract unenforceable by the litigation financer against the
16 consumer, or by any successor-in-interest to the litigation financing contract.

17 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS --
THIRD-PARTY LITIGATION FINANCING CONSUMER PROTECTION ACT

- 1 This act would comprehensively regulate the practices of third-party litigation financiers in
2 Rhode Island. Regulatory authority would be established in the department of business regulation.
3 A violation of the provisions of this chapter or the rules and regulations promulgated to implement
4 and enforce the provisions of this chapter would render the litigation financing contract
5 unenforceable.
6 This act would take effect upon passage.

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