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HOUSE BILL 312

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Marian Matthews and Alan T. Martinez

AN ACT

RELATING TO LITIGATION; ENACTING THE LITIGATION FINANCING
TRANSPARENCY ACT; REQUIRING DISCLOSURES; PROVIDING ENFORCEMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
cited as the "Litigation Financing Transparency Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Litigation Financing Transparency Act:

A. "action" means a civil action, an administrative
proceeding, a claim or other cause of action;

B. "financial institution" means a bank, a trust
company, a savings and loan association, a credit union, a
consumer lender, an international banking facility or a
financial holding company under the jurisdiction of the state
or federal government;

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1 C. "foreign person" means a person that is not:

2 (1) a citizen of the United States;

3 (2) an alien lawfully admitted for permanent
4 residence in the United States;

5 (3) an unincorporated association with a
6 majority number of members of which are citizens of the United
7 States or aliens lawfully admitted for permanent residence in
8 the United States; or

9 (4) a corporation, a limited liability
10 company, a partnership, a society or other business entity that
11 was formed or incorporated in the United States;

12 D. "foreign principal" means:

13 (1) the government or a government official of
14 a country other than the United States;

15 (2) a political subdivision or political party
16 of a country other than the United States; or

17 (3) a partnership, an association, a
18 corporation, an organization or other combination of persons
19 organized under the laws or having its principal place of
20 business in a country other than the United States whose shares
21 or other ownership interest is owned by the government or a
22 government official of a country other than the United States
23 or owned by a political subdivision or political party of a
24 country other than the United States;

25 E. "funded consumer" means a person who has entered

1 into a litigation financing agreement or whose recovery or
2 outcome in an action is affected by or subject to a litigation
3 financing agreement;

4 F. "leadership position" means a lead counsel, a
5 co-lead counsel, a common benefit counsel, a steering committee
6 member, an executive committee member and similar positions or
7 roles;

8 G. "licensed health care provider" means:

9 (1) a person, a corporation or an institution
10 licensed by the state to provide health care, medical services,
11 nursing services or other health-related services and includes
12 officers, employees and agents working under the supervision of
13 the person, corporation or institution in providing the health
14 care, medical services, nursing services or other health-
15 related services; or

16 (2) a federally licensed, regulated or
17 registered blood bank, blood center or plasma center that
18 collects, processes or distributes whole human blood, blood
19 components, plasma, blood fractions or blood derivatives for
20 use by a licensed health care provider and includes the
21 officers, employees and agents of the blood bank, blood center
22 or plasma center;

23 H. "litigation financier" means a person that has
24 entered into a litigation financing agreement with a funded
25 consumer or with the counsel of record for a party to an

1 action;

2 I. "litigation financing agreement" means an
3 agreement for which a person agrees to provide financing,
4 funding, advancing or loaning of money to pay for fees, costs,
5 expenses or other sums arising from or in a manner related to
6 an action in exchange for the right to receive repayment,
7 interest, fees or other consideration that cumulatively exceeds
8 the amount of money given by the person and that is contingent
9 on the outcome of an action or on the outcome of a matter
10 within a portfolio that includes the action and involves the
11 same counsel or affiliated counsel but excludes agreements,
12 contracts or arrangements entered into with or by:

13 (1) a named party to the action if payments
14 made to the named party are provided exclusively for personal
15 and family use and are provided on the condition that they are
16 not to be used for legal filings, legal document preparation
17 and drafting, appeals, creation of a litigation strategy,
18 drafting testimony or other expenses directly related to
19 litigation;

20 (2) a counsel of record for legal services
21 provided on a contingency fee basis or advanced legal costs
22 provided by a counsel of record;

23 (3) a person with a preexisting contractual
24 obligation to indemnify or defend a party to the action or a
25 health insurer who has paid or is obligated to pay sums for

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1 health care services rendered to an injured person under the
2 terms of a health insurance policy, plan or agreement;

3 (4) a financial institution for repayment of
4 loans made directly to a party or a party's counsel when
5 repayment of the loan is not contingent on the outcome of an
6 action by settlement, judgment or otherwise or on the outcome
7 of a matter within a portfolio that includes the action and
8 involves the same counsel or affiliated counsel;

9 (5) an organization that is exempt from
10 taxation under Section 501(c)(3) of the United States Internal
11 Revenue Code of 1986 if the funding provided to the
12 organization is used to seek relief other than compensatory
13 damages in excess of one hundred thousand dollars (\$100,000) or
14 punitive damages, whether as a party or on behalf of a client
15 or member of the organization and regardless of whether the
16 organization seeks an award of costs or attorney fees in
17 providing pro bono representation;

18 (6) an organization that is exempt from
19 taxation under Section 501(c)(3) of the United States Internal
20 Revenue Code of 1986 that provides funding by grant or
21 otherwise to support the pursuit of litigation that does not
22 seek compensatory damages in excess of one hundred thousand
23 dollars (\$100,000) or punitive damages; or

24 (7) a person that provides funding to a
25 medical practice or facility solely for its receivables;

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1 J. "proprietary information" means information that
2 is developed, created or discovered by a person or that became
3 known by or was conveyed to the person that has commercial
4 value in the person's actual or anticipated business, research
5 or development or that is received in confidence by or for the
6 person from any source; and

7 K. "sovereign wealth fund" means an investment fund
8 that is owned or controlled by a foreign principal or an agent
9 of a foreign principal.

10 **SECTION 3. [NEW MATERIAL] PROHIBITED CONDUCT.--A**

11 litigation financier shall not:

12 A. direct or make decisions with respect to the
13 course of an action that is subject to a litigation financing
14 agreement, including decisions concerning appointing or
15 changing counsel representing the funded consumer, choice of or
16 use of expert witnesses and litigation strategy. The funded
17 consumer and counsel of record shall retain all rights to
18 control and decision making with regard to the action;

19 B. pay or offer to pay a commission, a referral fee
20 or other consideration to a person, including legal counsel, a
21 law firm or a licensed health care provider, for referring a
22 person to the litigation financier;

23 C. assign, including securitizing, a litigation
24 financing agreement in whole or in part; or

25 D. be assigned rights to an action that is subject

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1 to a litigation financing agreement to which that litigation
2 financier is a party.

3 SECTION 4. [NEW MATERIAL] MANDATORY DISCLOSURES.--

4 A. Legal counsel that enters into a litigation
5 financing agreement must deliver a copy of the litigation
6 financing agreement to all persons the legal counsel is
7 representing in the subject action within thirty days after the
8 earlier of being retained as legal counsel or entering into the
9 litigation financing agreement.

10 B. Except as otherwise stipulated or ordered by a
11 court of competent jurisdiction, a party to an action or the
12 party's legal counsel of record, without awaiting a discovery
13 request and within thirty days after commencement of the
14 action, shall:

15 (1) deliver a copy of the litigation financing
16 agreement to:

17 (a) all parties to the action or to the
18 parties' legal counsels of record;

19 (b) the court, agency or tribunal in
20 which the action is pending;

21 (c) a known person with a preexisting
22 contractual obligation to indemnify or defend a party to the
23 action, including an insurer providing indemnification or
24 paying a party's defense costs;

25 (d) for a class action, a member of the

1 class on request; and

2 (e) for multidistrict litigation
3 consolidated in this state, all legal counsel approved or
4 appointed to a leadership position;

5 (2) disclose in writing to the persons listed
6 in Paragraph (1) of this subsection the existence and nature of
7 a legal, financial or other relationship between legal counsel
8 for the party to the action that is subject to a litigation
9 financing agreement and the litigation financier; and

10 (3) disclose in writing to the persons listed
11 in Paragraph (1) of this subsection, the United States
12 department of state and the office of the attorney general of
13 the United States the name, address and citizenship or country
14 of incorporation or registration of a foreign person, foreign
15 principal or sovereign wealth fund, other than named parties or
16 legal counsel of record:

17 (a) that has a right to receive a
18 payment that is contingent on the outcome of the action by
19 settlement, judgment or otherwise, or on the outcome of a
20 matter within a portfolio that includes the action and involves
21 the same or affiliated legal counsel;

22 (b) from which money that is used to
23 satisfy a term of the litigation financing agreement has been
24 or will be directly or indirectly sourced, in whole or in part;
25 or

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1 (c) that has received or is entitled to
2 receive proprietary information or information that encompasses
3 national defense, foreign intelligence and counterintelligence,
4 international and internal security and foreign relations of
5 the United States.

6 C. The disclosure obligations required by this
7 section are continuing obligations and are triggered on a named
8 party or the named party's legal counsel of record entering
9 into a new litigation financing agreement or amending an
10 existing litigation financing agreement.

11 D. Prior to production of a litigation financing
12 agreement in response to a discovery request, a named party may
13 request and a court must conduct an in-camera review of the
14 agreement to determine whether it meets the requirements for a
15 litigation financing agreement. A party may redact information
16 that may identify the litigation financier before submitting
17 the agreement for in-camera review. If the court concludes
18 that the agreement is a litigation financing agreement, a named
19 party may obtain discovery of the litigation financing
20 agreement and all parties to the litigation financing
21 agreement.

22 E. The court shall determine sanctions for a party
23 that fails to make the disclosures required by the Litigation
24 Financing Transparency Act. An evasive or incomplete
25 disclosure shall be treated as a failure to make the required

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1 disclosure.

2 F. The disclosure obligations prescribed by this
3 section apply to class actions and multidistrict litigation.

4 SECTION 5. [NEW MATERIAL] PROTECTION FROM ADVERSE
5 DETERMINATIONS.--

6 A. In a litigation financing agreement, a
7 litigation financier shall indemnify the funded consumers
8 against adverse costs, attorney fees, damages or sanctions that
9 may be ordered or awarded in an action for which a litigation
10 financier is providing financing for the litigation.

11 B. Notwithstanding Subsection A of this section,
12 indemnification is not required for adverse costs, attorney
13 fees, damages or sanctions that result from the consumer's
14 intentionally wrongful conduct.

15 SECTION 6. [NEW MATERIAL] VIOLATION OF ACT.--

16 A. A litigation financing agreement that is entered
17 into in violation of the Litigation Financing Transparency Act
18 is void.

19 B. A litigation financier that violates a section
20 of the Litigation Financing Transparency Act commits an
21 unlawful act under the Unfair Practices Act.

22 SECTION 7. APPLICABILITY.--The Litigation Financing
23 Transparency Act applies to a civil action, an administrative
24 proceeding, a claim or a cause of action that is pending or
25 commenced on or after the effective date of that act.

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SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is December 31, 2025.