

SENATE BILL NO. 511

INTRODUCED BY G. HERTZ

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO LITIGATION FINANCING; AMENDING THE LITIGATION FINANCING TRANSPARENCY AND CONSUMER PROTECTION ACT; CREATING THE FOREIGN INVESTMENT IN LITIGATION FINANCING ACT; PROVIDING A PROHIBITION ON LITIGATION FUNDING BY CERTAIN FOREIGN ENTITIES; PROVIDING FOR REGISTRATION AND TRANSPARENCY OF FOREIGN PERSONS; AMENDING DEFINITIONS; AMENDING SECTIONS 31-4-102, 31-4-104, 31-4-108, 31-4-118, AND 31-4-120, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 31-4-102, MCA, is amended to read:

"31-4-102. Definitions. For the purposes of this part, the following definitions apply:

(1) "Consumer" means any individual who resides, is present, or is domiciled in this state or person who is or may become a plaintiff, claimant, or complainant in conjunction with or in pursuit of a legal claim 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) "Legal claim" means a civil action, administrative proceeding, claim, or cause of action to recover damages or any form of monetary or injunctive relief in this state.

(3)(4) "Legal representative" means any an attorney, or group of attorneys, or law firm or group of law firms duly licensed and authorized to practice law and engaged to represent a consumer in conjunction with or in pursuit of a legal claim a civil action, administrative proceeding, or claim to recover damages in this state.

(4)(5) (a) "Litigation financier" means any person or group of persons engaged in, or formed, created, or established for the purpose of engaging in, the business of litigation financing or any other business

1 or economic activity in which a person or group of persons receive consideration of any kind in exchange for
2 providing litigation financing.

3 (b) The term does not include:

4 (i) a party to the legal claim;

5 (ii) a legal representative engaged directly, or indirectly through another legal representative, to
6 represent a party in conjunction with or in pursuit of the legal claim; or

7 (iii) an entity or insurer with a preexisting contractual obligation to indemnify or defend a party to a
8 legal claim.

9 (5)(6) "Litigation financing" means:

10 (a) the financing, funding, advancing, or loaning of money to a legal representative or to any
11 person who has or may pursue or assert a legal claim or who is or may become a plaintiff in conjunction with or
12 in pursuit of a legal claim if:

13 (i) repayment of all or a portion of the amount financed, funded, advanced, or loaned is contingent
14 in any respect on the outcome of a legal claim or group of legal claims;

15 (ii) repayment is required only if the person prevails in conjunction with or in pursuit of a legal
16 claim; or

17 (iii) the money or funds for the repayment of any amount of the financing, funding, advance, or loan
18 is derived or sourced, directly or indirectly, from the proceeds of or other consideration realized from a
19 judgment, award, settlement, verdict, or other form of monetary relief the person or legal representative may
20 receive or recover in conjunction with or in pursuit of a legal claim or group of legal claims; or to pay for fees,
21 costs, expenses, or any other sums arising from or in any manner related to a civil action, administrative
22 proceeding, claim, or cause of action, if the financing, funding, advancing, or loaning of money is provided by
23 any person other than a person who is:

24 (a) a party to the civil action, administrative proceeding, claim, or cause of action;

25 (b) a legal representative engaged, directly or indirectly through another legal representative, to
26 represent a party in the civil action, administrative proceeding, claim, or cause of action; or

27 (c) an entity or insurer with a preexisting contractual obligation to indemnify or defend a party to
28 the civil action, administrative proceeding, claim, or cause of action

1 **(b)** any agreement or arrangement involving the financing, funding, advancing, or loaning of
 2 money to a legal representative if the repayment of all or a portion of the amount financed, funded, advanced,
 3 or loaned is contingent on the outcome of any single legal claim or group of legal claims in which the legal
 4 representative represents one or more consumers.

5 ~~(6)(7)~~ **(a)** "Litigation financing contract" means a written contract in which a person agrees to provide
 6 litigation financing to any person ~~in conjunction with a civil action or an administrative proceeding or in pursuit of~~
 7 ~~any claim or cause of action in this state~~ in consideration for:

8 (i) the payment of interest, fees, or other consideration to the person providing the litigation
 9 financing; or

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

14 **(b)** The term includes an agreement related to a litigation financing contract.

15 ~~(b)(c)~~ The term does not include any agreement, contract, or engagement of a legal representative to
 16 render legal services to a consumer on a contingency fee basis, including the advancement of legal costs by
 17 the legal representative, in which the services or costs are provided to or on behalf of a consumer by the legal
 18 representative representing the consumer in the legal claim ~~civil action, administrative proceeding, claim, or~~
 19 ~~cause of action.~~

20 ~~(7)(8)~~ "Person" means ~~includes~~ an individual ~~and or~~ an entity.

21 **(9)** "Proprietary information" means any documents, records, or information received by a party in
 22 conjunction with or in pursuit of a legal claim that has economic or commercial value in any person's business
 23 and is:

24 **(a)** designated as proprietary information by a party to the legal claim; or

25 **(b)** subject to a court order to protect, seal, or otherwise restrict the disclosure or sharing of the
 26 documents, records, or information.

27 ~~(8)(10)~~ "Regulated lender" has the same meaning as in 31-1-111.

28 ~~(9)(11)~~ "Secretary" means the secretary of state provided for in Title 2, chapter 15, part 4."

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Section 2. Section 31-4-104, MCA, is amended to read:

"31-4-104. Litigation financing protections. (1) A litigation financier may not:

- (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 financier;
- (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 that the rate of interest allowed under 31-1-107;
- (d) receive or recover any payment that exceeds 25% 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 its 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 financier 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; ~~and~~
- (l) make a decision, influence, or direct a decision regarding a legal claim to recover damages including decisions in appointing or changing counsel, choice or use of expert witnesses, litigation strategy, and settlement or other resolution; or

1 ~~(h)~~(m) demand, request, receive, or exercise any right to influence, affect, or otherwise make any
 2 decision in the handling, conduct, administration, litigation, settlement, or resolution of any civil action,
 3 administrative proceeding, claim, or cause of action in which the litigation financier has provided litigation
 4 financing. All rights remain solely with the consumer and the consumer's legal representative.

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

8 (3) A party, attorney or law firm representing a party, or affiliated attorney or law firm may not
 9 disclose or share any information with a litigation financier that is subject to a protective or sealing order from a
 10 court.

11 (4) A party to a legal claim may not disclose to or share with a litigation financier any proprietary
 12 information received in the course of or in conjunction with a legal claim."

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14 **Section 3.** Section 31-4-108, MCA, is amended to read:

15 **"31-4-108. Disclosure and discovery of litigation financing contracts.** (1) Except as otherwise
 16 stipulated or ordered by a court of competent jurisdiction, a consumer or the consumer's legal representative or
 17 a party or a party's legal representative shall, without awaiting a discovery request, disclose and deliver to the
 18 following persons the litigation financing contract:

19 (a) each party to the civil action, administrative proceeding, claim, or cause of action, or to each
 20 party's legal representative;

21 (b) the court, agency, or tribunal in which the civil action, administrative proceeding, claim, or
 22 cause of action may be pending; and

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

25 (2) The disclosure obligation under subsection (1) exists regardless of whether a civil action or an
 26 administrative proceeding has commenced.

27 (3) The disclosure obligation under subsection (1) is a continuing obligation, and within 30 days of
 28 entering into a litigation financing contract or amending an existing litigation financing contract, the consumer or

1 the consumer's legal representative or a party or a party's legal representative shall disclose and deliver any
 2 new or amended litigation financing contracts.

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

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8 **Section 4.** Section 31-4-118, MCA, is amended to read:

9 **"31-4-118. Exemptions.** This part does not apply to the following:

10 (1) a nonprofit entity that is exempt from federal income taxation under section 501(c)(3) of the
 11 Internal Revenue Code or a nonprofit entity that provides litigation financing, directly or indirectly, for the benefit
 12 of the nonprofit or one or more of its members without receiving funding, or money to a legal representative to
 13 represent a consumer on a pro bono basis, provided that the nonprofit entity does not receive, in consideration
 14 for the litigation financing:

15 (a) ~~the payment of interest, fees, or other consideration in excess of the amount of attorney fees~~
 16 ~~and litigation expenses incurred in conjunction with or in pursuit of the legal claim; or~~

17 (b) ~~except for in-house counsel of the nonprofit, any right to recovery or payment from the amount~~
 18 ~~of any judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil action,~~
 19 ~~administrative proceeding, claim, or cause of action;~~

20 (2) any litigation financing provided by an entity engaged in commerce or business activity, but
 21 only if the entity does not:

22 (a) charge or collect any interest, fees, or other consideration;

23 (b) retain or receive any financial interest in the outcome of the legal claim ~~civil action,~~
 24 ~~administrative proceeding, claim, or cause of action; or~~

25 (c) receive any right to recovery or payment from the amount of any judgment, award, settlement,
 26 verdict, or other form of monetary relief obtained in conjunction with or in pursuit of the legal claim ~~the civil~~
 27 ~~action, administrative proceeding, claim, or cause of action; or~~

28 (3) a regulated lender that does not receive, in consideration for loaning money to any person, a

1 right to receive payment from the value of any proceeds or other consideration realized from any judgment
 2 award, settlement, verdict, or other form of monetary relief any person may receive or recover in conjunction
 3 with or in pursuit of the legal claim ~~relation to any civil action, administrative proceeding, claim, or cause of~~
 4 ~~action.~~"

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6 **Section 5.** Section 31-4-120, MCA, is amended to read:

7 **"31-4-120. Joint and several liability for costs.** A litigation financier is jointly and severally liable for
 8 any award or order imposing or assessing costs or monetary sanctions against a consumer or a party's legal
 9 representative arising from or relating to any civil action, administrative proceeding, claim, or cause of action for
 10 which the litigation financier is providing litigation financing."

11

12 NEW SECTION. Section 6. Short title. [Sections 6 through 11] may be cited as the "Foreign
 13 Investment in Litigation Financing Act".

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15 NEW SECTION. Section 7. Definitions. The definitions set forth in 31-4-102 apply for purposes of
 16 [sections 6 through 11]. In addition, the following definitions apply for purposes of [sections 6 through 11]:

17 (1) "Foreign adversary" means:

18 (a) a foreign government of a foreign country identified or designated as a foreign adversary
 19 pursuant to 15 CFR 791.4, as in effect on [the effective date of this act];

20 (b) any political subdivision, agency, department, or political party of a foreign government
 21 identified in subsection (1)(a); or

22 (c) a foreign nongovernment person identified or designated by the United States secretary of
 23 commerce as a foreign adversary pursuant to 15 CFR 791.4, as in effect on [the effective date of this act].

24 (2) "Foreign person" means:

25 (a) an individual who is not a citizen of the United States or is not an alien lawfully admitted for
 26 permanent residence in the United States;

27 (b) an entity that is not formed, organized, incorporated, or created in the United States;

28 (c) an entity of which a majority of the persons who own or control the entity are not citizens of the

1 United States or are not aliens lawfully admitted for permanent residence in the United States;

2 (d) the government, a political subdivision, agency, department, or a political party of a country
3 other than the United States;

4 (e) an entity that has a place of business in a country other than the United States and that has
5 shares or other ownership interest held by the government or a government official of a country other than the
6 United States; and

7 (f) an employee, officer, director, official, or member of an entity described in this subsection (2).

8 (3) "Foreign person of concern" means a person that:

9 (a) is formed, organized, incorporated, or created in a foreign country identified as a foreign
10 adversary;

11 (b) is formed, organized, incorporated, owned, controlled, or affiliated, directly or indirectly, with a
12 foreign adversary;

13 (c) maintains a personal residence or place of business in a foreign country identified as a foreign
14 adversary; or

15 (d) is formed, organized, incorporated, owned, controlled, or affiliated, directly or indirectly, with a
16 foreign person that has been:

17 (i) placed on the federal office of foreign assets control's specially designated nationals and
18 blocked persons list, also known as the SDN list, as amended; or

19 (ii) designated by the United States secretary of state as a foreign terrorist person or organization.
20

21 **NEW SECTION. Section 8. Prohibition on litigation funding by foreign adversaries or foreign**
22 **persons of concern.** (1) A foreign adversary or a foreign person of concern may not engage in litigation
23 financing in this state.

24 (2) A foreign adversary or a foreign person of concern may not, directly or indirectly, invest in,
25 finance, fund, or loan money to a litigation financier engaged in litigation financing in this state.

26 (3) A litigation financier engaged in litigation financing in this state may not, directly or indirectly:

27 (a) become affiliated with or maintain an affiliation with a foreign adversary or a foreign person of
28 concern;

1 (b) receive or accept money or funds from a foreign adversary or a foreign person of concern; or

2 (c) allow a foreign adversary or a foreign person of concern to invest in, maintain an ownership
3 interest in, or exercise any control over the litigation financier.

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5 NEW SECTION. **Section 9. Restriction on disclosure of proprietary information.** A party to a civil
6 action or administrative proceeding in this state may not disclose to or share with a foreign person, a foreign
7 adversary, or a foreign person of concern any proprietary information received in conjunction with or in pursuit
8 of a legal claim in this state.

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10 NEW SECTION. **Section 10. Limitations on foreign litigation funding.** (1) A foreign person is
11 prohibited from engaging in the activities set forth in subsection (2) if the foreign person directly or indirectly:

- 12 (a) engages in litigation financing;
- 13 (b) becomes affiliated with or maintains an affiliation with a litigation financier;
- 14 (c) finances, funds, or loans money to a litigation financier; or
- 15 (d) invests in, maintains an ownership interest in, or exercises any control over a litigation financier.

16 (2) A foreign person that engages in the activities set forth in subsection (1) may not:

17 (a) become affiliated with or maintain an affiliation with a foreign adversary or a foreign person of
18 concern;

19 (b) receive or accept money or funds from a foreign adversary or a foreign person of concern; or

20 (c) allow a foreign adversary or a foreign person of concern to invest in, maintain an ownership
21 interest in, or exercise any control over the foreign person.

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23 NEW SECTION. **Section 11. Registration and transparency of foreign persons.** (1) A foreign
24 person who is qualified to engage in litigation financing in this state shall comply with this chapter if the foreign
25 person engages in litigation financing in this state.

26 (2) A litigation financier shall disclose in writing to the secretary of state the information set forth in
27 subsection (3) if the litigation financier engages in any of the following:

28 (a) becomes affiliated with or maintains an affiliation with a foreign person;

- 1 (b) receives or accepts money or funds from a foreign person for any purpose; or
- 2 (c) allows a foreign person to invest in, maintain an ownership interest in, or exercise any control
- 3 over the litigation financier.

4 (3) The following information must be disclosed in writing to the secretary of state:

- 5 (a) the name and address of the foreign person and the citizenship of the foreign person or the
- 6 country of incorporation, formation, or registration of the foreign person; and
- 7 (b) a copy of each litigation financing contract in which the foreign person is entitled to receive any
- 8 payment under the contract.

9 (4) The litigation financier shall provide the written notice and the information disclosure required by

10 under this section subsection (2) within 30 days after the date on which any a litigation financing agreement is

11 executed by the consumer.

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13 **NEW SECTION. Section 12. Codification instruction.** [Sections 6 through 11] are intended to be

14 codified as a new part in Title 31, chapter 4, and the provisions of Title 31, chapter 4, apply to [sections 6

15 through 11].

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17 **NEW SECTION. Section 13. Severability.** If a part of [this act] is invalid, all valid parts that are

18 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,

19 the part remains in effect in all valid applications that are severable from the invalid applications.

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21 **NEW SECTION. Section 14. Effective date.** [This act] is effective on passage and approval.

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23 **NEW SECTION. Section 15. Applicability.** [This act] applies to litigation financing contracts entered

24 into on or after [the effective date of this act].

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