



# Navigating Transparency:

## Louisiana's New Law Impacting Litigation Finance

By Nicholas W. D'Aquila



In 2024, Gov. Jeff Landry signed into law a significant piece of legislation that aims to regulate third-party litigation funding. The law is composed of two primary parts — the Transparency and Limitations on Foreign Third-Party Litigation Funding Act<sup>1</sup> and the Litigation Financing Disclosure Act.<sup>2</sup> This law follows a similar bill that was passed in 2023 but was vetoed by then-Gov. John Bel Edwards. With Landry's signature, Louisiana has now joined a growing list of states taking action to address the complexities surrounding third-party litigation funding.

The third-party litigation funding industry is estimated to have grown significantly in recent years, with assets under management in the U.S. litigation finance market reaching approximately \$15.2 billion in 2023.<sup>3</sup> Proponents of the industry argue that litigation funding promotes access to justice, allowing plaintiffs who may lack resources to pursue legal action against well-funded corporations. Critics, however, argue that such funding may encourage unnecessary litigation and may raise ethical concerns about the extent to which outside funders can influence legal strategy or settlements.

As the industry grows, the large amount of capital being directed into litigation funding has drawn increased scrutiny, raising questions about transparency, fairness and potential conflicts of interest. The enactment of Louisiana's law reflects concerns about the need for greater disclosure of funding sources and agreements to ensure that parties involved in litigation understand who has a financial interest in the outcome of a case, among other objectives.

Several other states have also begun to focus on regulating third-party litigation funding. Indiana, West Virginia and other states have recently enacted comparable laws to address similar concerns.<sup>4</sup> At the federal level, there has been growing attention on this issue as well. In October 2024, at the request of lawmakers and major companies with combined market capitalizations in the trillions of dollars, the U.S. Judicial Conference's Advisory Committee on Civil Rules agreed to create a subcommittee to examine amending the Federal Rules of Civil Procedure to

include uniform rules for the disclosure of litigation funding agreements in civil cases.<sup>5</sup> While any resulting federal standards could eventually shape state frameworks, Louisiana's new law currently sets the standard within the state.

This article will review the key provisions of Louisiana's newly enacted law and potential implications for impacted stakeholders, including plaintiffs' counsel, funders and the courts.

### **Transparency and Limitations on Foreign Third-Party Litigation Funding Act**

One of the most significant aspects of Louisiana's newly enacted legislation is its focus on restricting the involvement of foreign third-party litigation funders, particularly from countries deemed adversarial to the United States. The law explicitly targets entities from "foreign countries of concern" which are defined in 15 C.F.R. § 7.4 (2023).<sup>6</sup> The intention behind this part of the law is to protect the national security interests of the United States and to prevent certain foreign entities from gaining access to sensitive trade secrets and other proprietary information through their involvement in litigation funding.

### **What is a Foreign Third-Party Litigation Funder?**

A foreign third-party litigation funder is defined as any foreign entity<sup>7</sup> that provides financial support to cover litigation expenses or lessen the impact of a negative judgment with the expectation of receiving a return contingent on the outcome of the litigation.<sup>8</sup> The law carves out several exceptions to this definition. These exceptions include counsel of record, named parties and law firms directly involved in the case, referring counsel, nonprofit legal organizations, health insurers and individuals providing funding for personal living expenses of the parties.<sup>9</sup>

Most of these exceptions are clear-cut, but La. R.S. 9:3580.2(7)(e) introduces a potential area of ambiguity. It refers to loans provided by financial institutions where repayment is not contingent on the outcome of the civil action or a portfolio

of actions within which the civil action is included. This wording opens the possibility that certain recourse loans — loans where personal or business assets secure repayment — might fall under this exception. Whether this was the intended scope of the exception or how courts will interpret such agreements could become a focal point in future litigation.

### **Prohibited Actions by Foreign Third-Party Litigation Funders**

The law prohibits foreign third-party litigation funders from engaging in several activities. These prohibitions are designed to limit the influence of foreign entities over litigation. Foreign funders are prohibited from entering agreements that allow a third party, other than the named parties or their attorneys, to receive or make payments funded by foreign entities, repayment of which is contingent on the outcome of the case or a portfolio of actions within which the case is included;<sup>10</sup> exerting control or influence over the litigation itself, including settlement negotiations;<sup>11</sup> and receiving an assignment of rights in the civil action they are funding, except for the right to receive a share of the proceeds as specified in the litigation financing agreement.<sup>12</sup>

### **Disclosure Requirements**

The law imposes disclosure requirements on any third-party litigation funder using funds from a foreign entity. These requirements aim to provide clear visibility into who is financially supporting a case and whether any sensitive information is at risk. There are several key disclosures that must be made by the third-party litigation funder to the Louisiana Attorney General:

► **Disclosure of the Foreign Entity's Information:** the name, address and citizenship or country of incorporation or registration of any foreign entity that has a right to receive payment contingent on the outcome of the civil action or has an obligation to make payment contingent on the outcome of the case;<sup>13</sup>

► **Disclosure of Proprietary or National Security Information:** the name, address, citizenship or country of incorporation or registration of any foreign entity that has received or is entitled to receive proprietary

information or information affecting national security interests as a result of the funding agreement. The law specifically clarifies that this disclosure requirement does not pertain to information received by the parties directly involved in the action;<sup>14</sup> and

► The funder must provide the Attorney General with a copy of the funding agreement.<sup>15</sup>

These disclosures must be made under penalty of perjury.<sup>16</sup> The disclosures must be made within 30 days of the execution of the agreement or the filing of the civil action.<sup>17</sup> If the funding agreement is executed after the filing of the action, the disclosure must be made by the party who entered the agreement within 30 days of being served.<sup>18</sup> Additionally, the third-party litigation funder must supplement any disclosures within 30 days if it becomes aware that the previous disclosure was incomplete or inaccurate.<sup>19</sup>

### Enforcement for Noncompliance

Failure to comply with these requirements can result in significant penalties. The law provides three primary consequences for violating these provisions:

► The funding agreement itself is null and void.<sup>20</sup>

► The violation is classified as a deceptive and unfair trade practice, which is actionable under Louisiana law.<sup>21</sup>

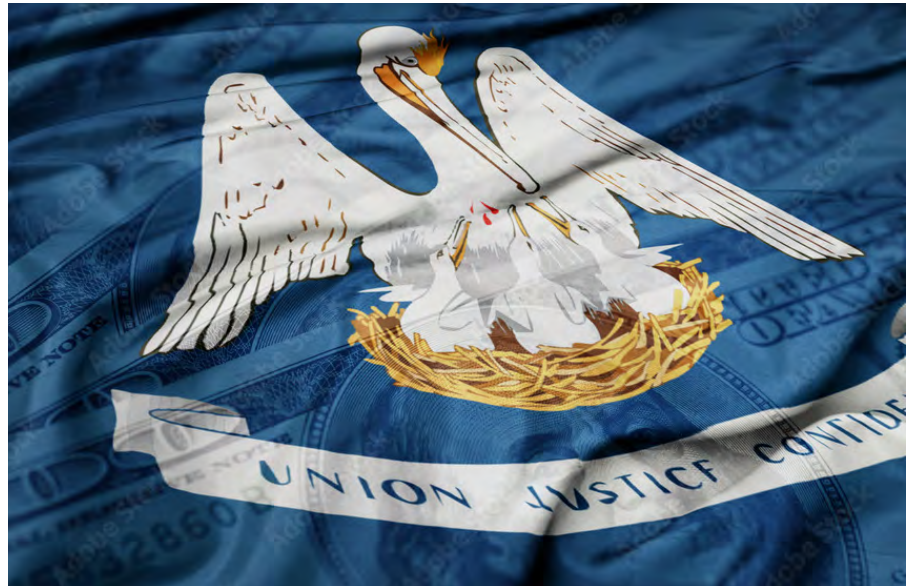
► The Attorney General is authorized to pursue legal action to enforce the law and seek a range of penalties against the violators.<sup>22</sup>

### Annual Reporting by the Attorney General

In addition to enforcement responsibilities, the law requires the Attorney General to submit an annual report to both the President of the Senate and the Speaker of the House of Representatives. This report will provide a summary of the disclosures made under the law, as well as any violations and enforcement actions taken.<sup>23</sup>

### Litigation Financing Disclosure Act

The Litigation Financing Disclosure Act is the second part of Louisiana's new legislation on third-party litigation



funding. This law aims to increase transparency in civil litigation by providing a framework for disclosure of litigation financing agreements. Its intended purpose is to protect the integrity of the legal process by preventing outside financial interests from unduly influencing the course of litigation or settlement outcomes.

### What is a Litigation Financer?

Under the law, a litigation financer is an entity or person who provides financial support to cover litigation expenses or lessen the impact of a negative judgment with the expectation of receiving a return contingent on the outcome of the lawsuit.<sup>24</sup> This typically involves third-party entities — often financial firms or investors — who fund the legal process in exchange for a portion of the settlement or judgment.

The law outlines several exceptions to the definition of a litigation financer. Specifically, the following entities are not considered litigation financiers: a party to the litigation; attorneys or law firms involved in the case; certain entities that may have a preexisting contractual obligation to defend or indemnify a party to the litigation; and health insurers with lien rights.<sup>25</sup> Additionally, individuals or entities providing funds for the personal and family use of a party are not classified as litigation financiers if the funding is unrelated to litigation expenses.<sup>26</sup>

### What Is a Litigation Financing Agreement?

A litigation financing agreement is broadly defined as any contract in which a litigation financer provides financial support for a party's legal case in exchange for a return on investment contingent on the outcome of the case. However, there are specific exceptions to what is considered a litigation financing agreement.

The law does not consider the following to constitute litigation financing agreements:

► Recourse Loans. In a recourse loan, the lender can recover its return on investment and funds from the personal or business assets of the loan recipient. This exemption could apply where the loan is not contingent on the outcome of the case but secured by other means.<sup>27</sup>

► Legal Services on Contingency. Agreements between a plaintiff and their attorney that involve contingency fees are also excluded. This ensures that traditional legal service arrangements are not confused with third-party litigation funding.<sup>28</sup>

► Healthcare lienholders. The bills, receivables or liens held by a healthcare provider or its assignee are not financing agreements.<sup>29</sup>

► Nonprofit legal services. Funding provided by certain nonprofit legal support entities would not constitute litigation financing.<sup>30</sup>

## Key Provisions

The Litigation Financing Disclosure Act includes several key provisions that define how litigation financiers and litigation financing agreements must operate:

► **Prohibition on Influence.** A litigation financier may not influence the litigation process or the settlement of a case. This means a financier cannot dictate legal strategy, affect settlement decisions or otherwise interfere in the resolution of the litigation.<sup>31</sup>

► **Subject to Discovery.** In civil actions, the existence of a litigation finance agreement is subject to discovery under the Code of Civil Procedure and Code of Evidence.<sup>32</sup>

The law applies prospectively, affecting only contracts and agreements entered after the law was enacted, avoiding any retroactive application.

## Implications of Discoverability

One notable aspect of the law is its approach to discovery. The law makes the existence of litigation financing agreements subject to discovery. While this creates judicial discretion in determining when these agreements or information about the agreements must be produced, it creates challenges for attorneys and judges who are navigating these issues for the first time.

## Practical Approaches in Other Jurisdictions

Courts around the country have dealt with similar discoverability provisions when determining the relevance of litigation financing agreements. Some courts have employed in camera reviews or ex parte proceedings, allowing judges to privately review the agreement to assess its relevance. This method ensures that sensitive information is protected but can create concerns about transparency for other parties involved in the litigation.

In other instances, courts have only required certain attestations from law firms, meaning that the law firm must confirm specific aspects of the agreement without disclosing the full document. This approach has the advantage of maintaining confidentiality but can lead to challenges when opposing counsel wants a more complete understanding

of the terms and parties involved.

Another approach seen in some jurisdictions is to disclose only portions of the agreements, such as those provisions that might directly impact the litigation process and parties involved, without revealing the full terms of the financing arrangement. This strikes a balance between confidentiality and transparency, but it may also leave room for disputes over what should or should not be disclosed.

## Conclusion

Louisiana's new law regulating litigation finance marks a significant step toward governing the involvement of third-party funding in civil litigation. By imposing strict disclosure requirements and limiting the influence of foreign funders from countries of concern, the state aims to protect both national security and the integrity of its legal system.

Further, making financing agreements subject to discovery under the Code of Civil Procedure and Code of Evidence creates a framework for courts to determine when such agreements must be produced. However, the judicial discretion for determining relevancy, for example, may introduce new challenges as attorneys and courts must now navigate when and how these agreements should be produced.

As other states and federal courts grapple with similar issues, Louisiana's approach provides a similar framework that prioritizes transparency while recognizing the evolving role of litigation funding. The law's prospective application provides some clarity moving forward, but as is the case in other jurisdictions, much will depend on how courts handle the first cases under these new rules. This legislation reflects the broader national conversation about the role of third-party funding, which may ultimately benefit from federal rulemaking and amendments to the Federal Rules of Civil Procedure.

## FOOTNOTES

1. La. R.S. 9:3580.1 through 3580.7 (effective Aug. 1, 2024).

2. La. R.S. 9:3580.11 through 3580.13 (effective Aug. 1, 2024).

3. Westfleet Advisors, *The Westfleet Insider 2023 Litigation Finance Market Report*, <https://www.westfleetadvisors.com/wp-content/uploads/2024/03/WestfleetInsider2023-Litigation-Finance-Market-Report.pdf> (last visited Oct. 14, 2024).

4. See Indiana (Ind. Code Ann. § 24-12-1-0.5); Montana (see MT LEGIS 360 (2023), 2023 Mont. Laws Ch. 360 (S.B. 269) (enacted 2023)); West Virginia (W. Va. Code Ann. § 46A-6N-6 (enacted 2019); S.B. 850, 2024 Reg. Sess. (W.V. Mar. 9, 2024) (signed Mar. 27, 2024)); and Wisconsin (Wis. Stat Ann. § 804.01(2)(bg) (2017); 2017 Wis. Act 235, <https://docs.legis.wisconsin.gov/2017/related/acts/235>).

5. Nate Raymond, *U.S. Judicial Panel to Examine Litigation Finance Disclosure*, Reuters, Oct. 10, 2024, <https://www.reuters.com/legal/government/us-judicial-panel-examine-litigation-finance-disclosure-2024-10-10/>.

6. 15 C.F.R. § 7.4 (2023) defines Iran, Russia, China, North Korea, Cuba and Venezuelan politician Nicolás Maduro as foreign adversaries.

7. As defined by La. R.S. 9:3580.2(2).

8. La. R.S. 9:3580.2(3).

9. La. R.S. 9:3580.2(7)(a)-(d), (f).

10. La. R.S. 9:3580.5(1).

11. La. R.S. 9:3580.5(2).

12. La. R.S. 9:3580.5(3).

13. La. R.S. 9:3580.3(A)(1).

14. La. R.S. 9:3580.3(A)(2).

15. La. R.S. 9:3580.3(A)(3).

16. La. R.S. 9:3580.4(A).

17. La. R.S. 9:3580.3(B)(1).

18. La. R.S. 9:3580.3(B)(2).

19. La. R.S. 9:3580.4(B).

20. La. R.S. 9:3580.6(A).

21. La. R.S. 9:3580.6(B).

22. La. R.S. 9:3580.6(C).

23. La. R.S. 9:3580.7(A)-(D).

24. La. R.S. 9:3580.12(2).

25. La. R.S. 9:3580.12(3)(a)(i)-(iii).

26. La. R.S. 9:3580.12(3)(b).

27. La. R.S. 9:3580.12(4)(c).

28. La. R.S. 9:3580.12(4)(a).

29. La. R.S. 9:3580.12(4)(b).

30. La. R.S. 9:3580.12(4)(d).

31. La. R.S. 9:3580.13(A).

32. La. R.S. 9:3580.13(B).

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