

BILL ANALYSIS

Senate Research Center
86R7092 TSR-F

S.B. 1567
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State Affairs
4/2/2019
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The financing of lawsuits by hedge funds and other investors has become a large, unregulated business that has skewed the litigation system by changing the incentives to favor repayment of the lender rather than the provision of justice or the satisfaction of the actual parties to the underlying lawsuit.

In many cases, parties are being coerced to accept settlements they do not feel are in their best interests in order to ensure that the lenders are repaid. This has the effect of wresting control of the plaintiff's own lawsuit away from the plaintiff.

Conversely, plaintiffs can effectively be required to decline a reasonable settlement offer that would satisfy all the parties to the lawsuit because after the lenders and the lawyers are paid, there is very little money for the actual plaintiff.

Litigation financing can also create ethical conflicts for the plaintiff's lawyer, who has a fiduciary duty to act in the best interests of the plaintiffs, but who also faces pressures from his or her lenders to make sure they get paid.

S.B. 1567 would require the Supreme Court of Texas to adopt rules to provide for the mandatory disclosure of third-party litigation financing agreements to parties in the lawsuit for which the financing was procured.

For the purposes of the bill, third-party litigation financing is the provision of financing with repayment being conditioned on and sourced from the person's proceeds from the lawsuit, whether from a judgment or settlement. The bill does not apply to the extension of credit to an attorney or law firm if the obligation to repay is not contingent on the outcome of the lawsuit.

As proposed, S.B. 1567 amends current law relating to mandatory disclosure of third-party litigation financing agreements.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 1 (Section 222.021, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 22, Government Code, by adding Section 22.021, as follows:

Sec. 22.021. DISCLOSURE OF THIRD-PARTY LITIGATION FINANCING. (a)
Provides that in this section:

(1) "Financing" means the provision of monetary or in-kind support to a person or group of persons who have or will file or prosecute a civil action, including a payment to an attorney who represents the person or group, a payment to a fact or expert witness, a payment of the costs of the civil action, or the provision of funds or credit to be used in the future to support the civil action. Provides the term

includes the provision of monetary or in-kind support, regardless of whether the support is called a loan, an advance, a purchase, or another term.

(2) "Third-party litigation financing" means the provision of financing with repayment being conditioned on and sourced from the person's or group's proceeds from the civil action, regardless of whether the proceeds are obtained through collection of a judgment, payment of a settlement, or otherwise. Provides that the term does not include:

(A) an extension of credit to any attorney or law firm when the obligation of the attorney or law firm to repay the loan is required by the loan agreement and is not contingent on the outcome of a specified civil action or portfolio of civil actions; or

(B) a contingent fee arrangement between an attorney or law firm and a client.

(b) Requires the Supreme Court of Texas (supreme court) to adopt rules to provide for the mandatory disclosure of third-party litigation financing agreements to the parties in a civil action in connection with which third-party litigation financing is provided.

SECTION 2. Requires the supreme court to adopt rules under Section 22.021, Government Code, as added by this Act, not later than December 31, 2019. Provides that the rules apply only to a civil action commenced on or after the effective date of the rules.

SECTION 3. Effective date: September 1, 2019.