



HOUSE BILL 2108

By Boyd

AN ACT to amend Tennessee Code Annotated, Title 47,
relative to litigation financing.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-16-103(c), is amended by deleting "thirty (30) days" and substituting "thirty-five (35) days".

SECTION 2. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. 1 to HB2108

Vaughan
Signature of Sponsor

AMEND Senate Bill No. 2101*

House Bill No. 2108

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Section 47-16-102, is amended by deleting the section and substituting:

As used in this chapter:

(1) "Commercial litigation financier":

(A) Means a person who provides commercial litigation financing;

and

(B) Does not include a litigation financier;

(2) "Commercial litigation financing" or "commercial litigation financing transaction":

(A) Means funding provided by a person to another person that is a party or has standing to become a party to a civil action, administrative proceeding, legal claim, or other legal proceeding seeking to recover monetary damages, or to the legal representative for such party, in exchange for a right to receive payment that is contingent on the outcome of such action, claim, or proceedings by settlement, judgment, or otherwise, or on the outcome of any matter within a portfolio that includes such action, claim, or proceedings and involves the same legal representative or affiliated legal representative; and

(B) Does not include:

(i) A party to the civil action, administrative proceeding, claim, or cause of action;

(ii) An attorney engaged directly or indirectly through another legal representative to represent a party in the civil action;

(iii) An entity or insurer with a preexisting contractual obligation to indemnify or defend a party to the civil action; or

(iv) A nonprofit organization that is funded by private donations; represents one (1) or more clients on a pro-bono, no-cost basis; and seeks only injunctive relief on behalf of its clients; provided, that this subdivision (2)(B)(iv) does not prohibit or otherwise affect an award of costs or attorney fees to such nonprofit organization seeking only injunctive relief on behalf of a client that such nonprofit organization represents on a pro-bono, no-cost basis, or to such client;

(3) "Commercial litigation financing contract" means a written contract memorializing the terms and conditions of commercial litigation financing;

(4) "Consumer" means a person who resides, is present, or is domiciled in this state, or who is or may become a plaintiff or complainant in a dispute in this state;

(5) "Foreign person" means a person who is not:

(A) A citizen of the United States;

(B) An alien lawfully admitted for permanent residence in the United States;

(C) An unincorporated association with a majority of members who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

(D) A corporation that is incorporated in the United States;

(6) "Litigation financier" means a person engaged in the business of litigation financing;

(7) "Litigation financing" or "litigation financing transaction":

(A) Means a non-recourse transaction in which financing is provided to a consumer in return for a consumer assigning to the litigation financier a contingent right to receive an amount of the potential proceeds of the consumer's judgment, award, settlement, or verdict obtained with respect to the consumer's legal claim; and

(B) Does not include:

(i) Legal services provided on a contingency fee basis, or advanced legal costs, where such services or costs are provided to or on behalf of a consumer by an attorney representing the consumer in the dispute and in accordance with the Tennessee Rules of Professional Conduct;

(ii) A commercial tort claim, as defined by § 47-9-102; or

(iii) A claim under the Workers' Compensation Law, compiled in title 50, chapter 6;

(8) "Person" means an individual, combination of persons, including a class of plaintiffs, firm, corporation, association, trust, partnership, joint venture, limited liability company, governmental authority, or other entity; and

(9) "Sovereign wealth fund" means an investment fund owned or controlled by a foreign principal or an agent of a foreign principal.

SECTION 2. Tennessee Code Annotated, Section 47-16-103, is amended by deleting the section and substituting:

(a)

(1) A litigation financier or commercial litigation financier shall not engage in a litigation financing transaction or commercial litigation financing transaction

in this state unless it is registered as a litigation financier or commercial litigation financier in this state.

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

(A) It is in compliance with the bond requirements of subsection (b);

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

(C) Its charter, articles of organization, certificate of limited partnership, or other organizational document, or, if a foreign entity, its application for a certificate of authority in this state, contains a statement that it will be designated as a litigation financier or commercial litigation financier pursuant to this chapter.

(3) A litigation financier or commercial litigation financier that is not a business entity or partnership is registered in this state if:

(A) It is in compliance with the bond requirements of subsection (b); and

(B) It files an application for registration as a litigation financier or commercial litigation financier on a form prescribed by the secretary of state, along with a filing fee of one hundred dollars (\$100), that contains the following:

(i) The applicant's full legal name;

(ii) The business name of the applicant, if any;

(iii) The physical street address and mailing address of the applicant;

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

(v) The name, physical street address, mailing address, and telephone number for a registered agent in this state that is appointed to accept service of process on behalf of the applicant;

(vi) A statement that the applicant will be designated as a litigation financier or commercial litigation financier pursuant to this chapter; and

(vii) Any other information the secretary of state deems necessary.

(b)

(1) Each litigation financier or commercial litigation financier shall file and have approved by the secretary of state a surety bond in the amount of fifty thousand dollars (\$50,000).

(2) The bond must be payable to this state for the use of the attorney general and reporter and any person who may have a cause of action against the obligor of the bond for a violation of this chapter. The bond must continue in effect so long as a litigation financier or commercial litigation financier is designated as a litigation financier or commercial litigation financier in the records of the secretary of state.

(c) A litigation financier or commercial litigation financier shall amend its registration with the secretary of state within thirty (30) days whenever the information contained in the record changes or becomes inaccurate or incomplete. A litigation financier or commercial litigation financier that is not a business entity or partnership may amend or withdraw its registration with the secretary of state by filing a form prescribed by the secretary of state, along with a filing fee of twenty dollars (\$20.00).

(d) All documents filed pursuant to this section are public record.

(e) The secretary of state shall collect a fee of twenty dollars (\$20.00) for copying all filed documents pursuant to this chapter. All such copies must be certified or validated by the secretary of state.

(f) The secretary of state, as appropriate, may promulgate rules in implementing this chapter, including the adoption of fees to cover administrative costs relating to administering this chapter.

(g) A person shall not register as a litigation financier or a commercial litigation financier, or engage in litigation financing or commercial litigation financing in this state if the person is, in any capacity directly or indirectly related to such person's litigation financing or commercial litigation financing business, affiliated with a foreign person, foreign principal, or sovereign wealth fund of a foreign government or foreign nongovernment person designated by the United States secretary of commerce as a foreign adversary pursuant to 15 CFR 791.4.

SECTION 3. Tennessee Code Annotated, Section 47-16-105, is amended by designating the existing language as subsection (a) and adding the following as a new subsection:

(b) A commercial litigation financier shall not:

(1) Direct, or make decisions with respect to, the course of a civil action, administrative proceeding, legal claim, or other legal proceeding for which the commercial litigation financier has provided commercial litigation financing, or a settlement or other disposition thereof, including decisions in appointing or changing legal representatives, choice or use of expert witnesses, and litigation strategy. All rights to make decisions with respect to the course and settlement or other disposition of the subject civil action, administrative proceeding, legal claim, or other legal proceeding remains solely with the parties to such action, claim, or proceeding and their legal representatives; or

(2) Contract for, receive, or recover, whether directly or indirectly, an amount greater than an amount equal to the share of the proceeds collectively recovered by the parties in a civil action, administrative proceeding, legal claim, or other legal proceeding seeking to recover monetary damages financed by a commercial litigation financing contract after the payment of any attorney fees and costs owed in connection to such action, claim, or proceeding.

SECTION 4. Tennessee Code Annotated, Section 47-16-106(a), is amended by deleting the subsection and substituting:

(a) A litigation financing contract or commercial litigation financing contract must contain the disclosures specified in this section for the applicable type of contract, which constitute material terms of the litigation financing contract or commercial litigation financing contract.

SECTION 5. Tennessee Code Annotated, Section 47-16-106, is amended by adding the following as new subsections:

(c) The body of a commercial litigation financing contract must contain the following:

The commercial litigation financier agrees that it has no right to and will not direct, or make any decisions with respect to, the course of any civil action, administrative proceeding, legal claim, or other legal proceeding that is included in this commercial litigation financing agreement, or any settlement or other disposition thereof. Such prohibition includes, but is not limited to, decisions in appointing or changing legal representatives, choice or use of expert witnesses, and litigation strategy. All rights to make decisions with respect to the course and settlement or other disposition of any civil action, administrative proceeding, legal claim, or other legal proceeding that is included in this commercial

litigation financing agreement remain solely with the party and the party's legal representative.

(d) A party or a party's legal representative shall file a commercial litigation financing contract, the subject of which is or includes the pending action, with the court and provide a copy to the other parties within fourteen (14) days after the party files its initial pleading or within fourteen (14) days after such a contract is executed or modified after the filing of the initial pleading. Prior to filing, the party or the party's legal representative may request a protective order to restrict further disclosure of the document.

SECTION 6. Tennessee Code Annotated, Section 47-16-107, is amended by designating the existing language as subsection (a) and adding the following as new subsections:

(b) A commercial litigation financier is jointly and severally liable for an award or order imposing or assessing costs or monetary sanctions against a party or the party's legal representative arising from or relating to a civil action, administrative proceeding, legal claim, or other legal proceeding for which the commercial litigation financier is providing commercial litigation financing to the party or the party's legal representative.

(c) In a commercial litigation financing contract, the commercial litigation financier shall agree to indemnify, and shall indemnify even without such agreement, the party to the civil action, administrative proceeding, legal claim, or other legal proceeding that is the subject of such commercial litigation financing contract and such party's legal representatives against any adverse costs, attorney fees, damages, or sanctions that may be ordered or awarded against such persons in such action, claim, or proceedings. However, such indemnification is not required or enforceable for adverse costs, attorney fees, damages, or sanctions that the commercial litigation financier can show resulted from the intentional misconduct of the party or the party's legal representatives.

SECTION 7. Tennessee Code Annotated, Section 47-16-110, is amended by adding the following as a new subsection:

(e) A commercial litigation financier shall not charge an annual fee of more than ten percent (10%) of the original amount of money provided pursuant to a commercial litigation financing transaction.

SECTION 8. This act takes effect upon becoming a law, the public welfare requiring it, and applies to contracts entered into, amended, or renewed on or after such date.