

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 3205

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CASTEEL.

6791H.01P

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 436, RSMo, by adding thereto four new sections relating to funding of legal actions, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 436, RSMo, is amended by adding thereto four new sections, to be known as sections 436.575, 436.580, 436.585, and 436.590, to read as follows:

436.575. As used in sections 436.575 to 436.590, the following terms mean:

2 **(1) "Agent of a foreign principal", any person who acts as an agent,**
3 **representative, employee, or servant, or any person who acts in any other capacity at**
4 **the order, request, or under the direction or control, of a foreign principal or of a person**
5 **any of whose activities are directly or indirectly supervised, directed, controlled,**
6 **financed, or subsidized in whole or in major part by a foreign principal, and who**
7 **directly or through any other person acts in the interest of such foreign principal;**

8 **(2) "Foreign principal", any country, government, person, sovereign wealth**
9 **fund, or entity listed as a "foreign country of concern" under 42 U.S.C. 19221(a)(1) or**
10 **an organization designated by the United States Secretary of State as a terrorist**
11 **organization;**

12 **(3) "Litigation expenses", costs incurred to pursue a civil action, including, but**
13 **not limited to, court costs, filing fees, attorney's fees, expert witness fees, travel expenses,**
14 **and expenses related to identifying or soliciting potential clients to participate in the**
15 **litigation before, during, or after filing or resolving the civil action;**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 **(4) "Litigation funder", a person or entity that enters a litigation funding**
17 **agreement or any person or entity who has a direct or indirect right to receive**
18 **compensation from a litigation funding agreement. A litigation funder does not include:**

19 **(a) A parent, sibling, spouse, grandparent, grandchild, or child related by blood,**
20 **adoption, or marriage of the party being funded;**

21 **(b) An attorney who, at the time money is provided to or on behalf of a client**
22 **under a litigation funding agreement, has an attorney-client relationship with the party**
23 **concerning the party's civil action;**

24 **(c) A licensed or registered financial institution that does not receive, in**
25 **consideration for loaning money to any person, a right to receive payment from the**
26 **value of any proceeds or other consideration realized from any judgment, award,**
27 **settlement, verdict, or other form of monetary relief any person may receive or recover**
28 **in relation to any civil action;**

29 **(d) A nonprofit entity that provides pro bono legal services to the party with no**
30 **right to receive payment from the amount of any judgment, award, settlement, verdict,**
31 **or other form of monetary compensation obtained in the civil action. Court ordered**
32 **awards of costs or attorney's fees to nonprofit legal organizations shall not be affected**
33 **by this section; or**

34 **(e) A person or entity that provides money to a party for litigation solely for**
35 **purposes other than funding litigation expenses;**

36 **(5) "Litigation funding agreement", with respect to any civil action or group of**
37 **civil actions, any written agreement:**

38 **(a) Whereby a third party agrees to provide funds to one of the named parties,**
39 **or any law firm affiliated with the action or group of civil actions; and**

40 **(b) Which creates a direct or collateralized interest in the proceeds of a civil**
41 **action or group of civil actions, by settlement, verdict, judgment, or otherwise, and**
42 **whose interest is based, in whole or in part, on a funding-based obligation to the action**
43 **or group of actions or the appearing counsel or any contractual co-counsel or the law**
44 **firms of the counsel or co-counsel executed with:**

45 **a. Any attorney representing a party;**

46 **b. Any co-counsel in the litigation with a contingent fee interest in the**
47 **representation of that party; or**

48 **c. Any third-party who has a collateral-based interest in the contingency fees of**
49 **the counsel or co-counsel firm related in whole or part to the fees derived from**
50 **representing that party.**

436.580. 1. A foreign principal or agent of a foreign principal shall not engage in
2 **litigation funding in this state.**

3 **2. A foreign principal or agent of a foreign principal shall not, directly or**
4 **indirectly, invest in, finance, fund, or loan money to a litigation funder in this state.**

5 **3. A person engaged in litigation funding in this state may not, directly or**
6 **indirectly:**

7 **(1) Become affiliated with or maintain an affiliation with a principal or agent of**
8 **a foreign principal; or**

9 **(2) Allow a foreign principal or agent of a foreign principal to invest in, maintain**
10 **an ownership interest in, or exercise any control over a litigation funding agreement or**
11 **litigation funded through a litigation funding agreement.**

436.585. 1. A litigation funder shall have a fiduciary duty to a party in a civil
2 **action if it has provided litigation funding for that civil action.**

3 **2. No litigation funder shall engage in any act, practice, or course of business**
4 **that is inconsistent with the litigation funder's fiduciary duty pursuant to subsection 1 of**
5 **this section.**

6 **3. A litigation funder shall be jointly liable for any award or order imposing or**
7 **assessing costs or monetary sanctions against a funded party or funded party's attorney**
8 **arising from or relating to the funded civil action.**

436.590. 1. It shall be an unlawful practice pursuant to section 407.020 to violate
2 **any provision of section 436.575 to 436.590, and pursuant to sections 407.010 to 407.130,**
3 **the violation shall be subject to penalties, remedies, and procedures provided in sections**
4 **407.010 to 407.130. The remedies available in this section are cumulative and in**
5 **addition to any other remedies available by law.**

6 **2. Any person who willfully and knowingly engages in any act or practice**
7 **declared to be unlawful by any provision of section 436.580 shall be guilty of a class E**
8 **felony.**

9 **3. The attorney general may institute a legal action to prohibit a person who**
10 **violates any provision of section 436.580 or 436.585 from providing litigation funding in**
11 **this state.**

12 **4. A litigation funding agreement that is entered into in violation of section**
13 **436.580 is void and unenforceable.**

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