

2025 South Dakota Legislature

Senate Bill 175**AMENDMENT 175D
FOR THE SENATE ENGROSSED BILL**

1 **An Act to create provisions governing litigation financing.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

4 Terms used in this Act mean:

5 (1) "Consumer," any individual who resides or is present in this state or who is or may
6 become a claimant or a plaintiff in a civil action or an administrative proceeding,
7 or in pursuit of any claim or cause of action in this state;

8 (2) "Division," the Division of Banking;

9 (3) "Entity," any domestic or foreign corporation, partnership, limited partnership,
10 limited liability company, trust, fund, plan, or any other business, enterprise,
11 association, or organization;

12 (4) "Foreign country of concern," a foreign government listed in 15 C.F.R. § 791.4
13 (January 1, 2025);

14 (5) "Foreign entity of concern," an association, corporation, organization, partnership,
15 or other combination of persons:

16 (a) Organized or incorporated in a foreign country of concern;

17 (b) Owned or controlled by the government, a political subdivision, or a political
18 party of a foreign country of concern;

19 (c) That has a principal place of business in a foreign country of concern; or

20 (d) Owned, organized, or controlled by or affiliated with a foreign organization
21 that has been placed on the federal Office of Foreign Assets Control specially
22 designated nationals and blocked persons list or designated by the United
23 States Secretary of State as a foreign terrorist organization;

24 (6) "Legal representative," an attorney, group of attorneys, or law firm duly licensed
25 and authorized to practice law and to represent a consumer in a civil action,
26 administrative proceeding, or claim to recover damages in this state;

- 1 (7) "Litigation financier," any individual or entity engaged in, or any entity formed,
2 created, or established for the purpose of engaging in, the business of litigation
3 financing or any other business or economic activity in which a person receives
4 consideration of any kind in exchange for providing litigation financing. A litigation
5 financier does not include a state or federally chartered bank or credit union;
- 6 (8) "Litigation financing," the financing, funding, advancing, or loaning of money to
7 pay for fees, costs, expenses, or any other sums arising from or in any manner
8 related to a civil action, administrative proceeding, claim, or cause of action, if the
9 financing, funding, advancing, or loaning of money is provided by any person other
10 than a person who is:
- 11 (a) A party to the civil action, administrative proceeding, claim, or cause of
12 action;
- 13 (b) A legal representative engaged, directly or indirectly through another legal
14 representative, to represent a party in the civil action, administrative
15 proceeding, claim, or cause of action; or
- 16 (c) An entity or insurer with a preexisting contractual obligation to indemnify
17 or defend a party to the civil action, administrative proceeding, claim, or
18 cause of action;
- 19 (9) "Litigation financing contract," a written contract in which a person agrees to
20 provide litigation financing to any person in conjunction with a civil action,
21 administrative action, claim, or cause of action in this state in consideration for:
- 22 (a) The payment of interest, fees, or other consideration to the person
23 providing the litigation financing; or
- 24 (b) Granting or assigning to the person providing the litigation financing a right
25 to receive payment from the value of any proceeds or other consideration
26 realized from any judgment, award, settlement, verdict, or other form of
27 monetary relief any consumer, legal representative, or other person may
28 receive or recover in relation to the civil action, administrative proceeding,
29 claim, or cause of action.
- 30 The term does not include any contract or engagement of a legal
31 representative to render legal services to a consumer on a contingency fee basis
32 or the advancement of legal costs by the legal representative, in which the services
33 or costs are provided to or on behalf of a consumer by the legal representative
34 representing the consumer in the civil action, administrative proceeding, claim, or
35 cause of action; and

1 (10) "Regulated lender," as defined in § 54-3-14.

2 **Section 2. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

3 A person may not engage in litigation financing in this state unless the person is
4 licensed as a money lender, as provided for in chapter 54-4.

5 **Section 3. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

6 An entity seeking to conduct business as a litigation financier must:

7 (1) Be active and in good standing, pursuant to § 47-1A-128, as reflected in the Office
8 of the Secretary of State; and

9 (2) Be authorized to engage in the business of litigation finance and designated as a
10 litigation financier in the entity's articles of incorporation, charter, articles of
11 organization, certificate of limited partnership, or other governing document.

12 **Section 4. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

13 An entity seeking to conduct business as a litigation financier must be licensed
14 pursuant to chapter 54-4. In addition to the information required pursuant to § 54-4-40,
15 the entity's application must include a statement containing:

16 (1) For each individual who, directly or indirectly, owns, controls, holds with the power
17 to vote, or holds proxies representing five percent or more of the voting securities
18 of the litigation financier:

19 (a) The individual's legal name;

20 (b) The individual's physical street address and mailing address;

21 (c) The individual's occupation;

22 (d) Any offices and positions held with the litigation financier during the past
23 five years; and

24 (e) Any conviction of a crime other than a misdemeanor traffic violation during
25 the past ten years;

26 (2) For each entity that, directly or indirectly, owns, controls, holds with the power to
27 vote, or holds proxies representing five percent or more of the voting securities of
28 the litigation financier:

29 (a) The entity's legal name;

30 (b) The entity's physical street address and mailing address; and

1 (c) The nature of the entity's business operations, if any, during the past five
2 years or a description of the business intended to be done by the entity and
3 entity's subsidiaries, if any; and

4 (3) The names of the individuals who are or who have been selected to become
5 directors or officers of the entity and each subsidiary of the entity.

6 The information required pursuant to subdivision (1) of this section must be
7 included for each individual.

8 **Section 5. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

9 All documents and information filed with the division pursuant to section 4 of this
10 Act are public records.

11 **Section 6. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

12 A litigation financier may not:

13 (1) Pay or offer commissions, referral fees, rebates, or other forms of consideration to
14 any person in exchange for referring a consumer to a litigation financier;

15 (2) Accept any commissions, referral fees, rebates, or other forms of consideration
16 from any person providing any goods or rendering any service to the consumer;

17 (3) Receive or recover any payment that exceeds twenty-five percent of the amount
18 of any judgment, award, settlement, verdict, or other form of monetary relief
19 obtained in the civil action, administrative proceeding, claim, or cause of action
20 that is the subject of the litigation financing contract;

21 (4) Advertise false or misleading information regarding the litigation financier's
22 products or services;

23 (5) Refer or require any consumer to hire or engage any person providing any goods
24 or rendering any services;

25 (6) Fail to promptly deliver a completed and signed litigation financing contract to the
26 consumer and the consumer's legal representative;

27 (7) Attempt to secure a remedy or obtain a waiver of any remedy, compensatory
28 damages, punitive damages, or statutory damages that the consumer may or may
29 not be entitled to pursue or recover otherwise;

30 (8) Offer or provide legal advice to the consumer;

31 (9) Assign or secure a litigation financing contract in whole or in part;

32 (10) Report a consumer to a credit reporting agency if insufficient funds remain to repay
33 the litigation financier in full from the proceeds received from any judgment, award,

1 settlement, verdict, or other form of monetary relief obtained in the civil action,
2 administrative proceeding, claim, or cause of action that is the subject of the
3 litigation financing contract;

4 (11) Demand, request, receive, or exercise any right to influence, affect, or otherwise
5 make any decision in the handling, conduct, administration, litigation, settlement,
6 or resolution of any civil action, administrative proceeding, claim, or cause of action
7 in which the litigation financier has provided litigation financing. All rights remain
8 solely with the consumer and the consumer's legal representative;

9 (12) Knowingly enter into an agreement creating a right for anyone, other than the
10 named parties or the legal representative of record, to receive or make any
11 payment that is contingent on the outcome of a claim or cause of action, the terms
12 of which are to be satisfied by funds directly sourced, in whole or in part, from a
13 foreign entity of concern; or

14 (13) Enter into a commercial litigation financing contract, directly or indirectly, with a
15 foreign entity of concern or a foreign country of concern.

16 Any action arising out of a violation of this section must be brought in a court of
17 competent jurisdiction.

18 **Section 7. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

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

23 **Section 8. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

24 The terms and conditions of a litigation financing contract must be set forth in a
25 written contract. The contract must contain all terms and conditions at the time the
26 contract is signed by any party to the contract.

27 On execution of a litigation financing contract, a litigation financier may not amend
28 the terms or conditions of the litigation financing contract without full disclosure to and
29 the prior written consent of all parties to the litigation financing contract.

30 A litigation financing contract must set forth the name, physical street address,
31 and mailing address of the litigation financier on the first page.

32 **Section 9. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

1 A litigation financing contract must contain the following disclosures that constitute
2 material terms and conditions of the litigation financing contract, typed in at least
3 fourteen-point bold font, and placed clearly and conspicuously immediately above the
4 consumer's signature line in the litigation financing contract:

5 "IMPORTANT DISCLOSURES -- PLEASE READ CAREFULLY

6 (1) Right to Cancellation: You may cancel this litigation financing contract without
7 penalty or further obligation within five business days from the date you sign this
8 contract or the date you receive financing from the litigation financier, whichever
9 date is later. You may cancel by sending a notice of cancellation to the litigation
10 financier and returning to the litigation financier any funds received from the
11 litigation financier at the litigation financier's address set forth on the first page of
12 this contract.

13 (2) The maximum amount the litigation financier may receive or recover from any
14 payment may not exceed twenty-five percent of the amount of any judgment,
15 award, settlement, verdict, or other form of monetary relief obtained in the civil
16 action, administrative proceeding, claim, or cause of action that is the subject of
17 this litigation contract.

18 (3) The litigation financier agrees that it has no right to, and will not demand, request,
19 receive, or exercise any right to influence, affect, or otherwise make any decision
20 in the handling, conduct, administration, litigation, settlement, or resolution of your
21 civil action, administrative proceeding, claim, or cause of action. All of these rights
22 remain solely with you and your legal representative.

23 (4) If there is no recovery of any money from your civil action, administrative
24 proceeding, claim, or cause of action, or if there is not enough money to satisfy in
25 full the portion assigned to the litigation financier, you will not owe anything in
26 excess of your recovery.

27 (5) You are entitled to a fully completed contract with no terms or conditions omitted
28 prior to signing. Before signing this contract, you should read the contract
29 completely and consult an attorney."

30 The litigation financing contract must also include the disclosures required pursuant
31 to § 54-4-58.

32 **Section 10. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

33 If the consumer is represented by a legal representative in the civil action,
34 administrative proceeding, claim, or cause of action that is the subject of the litigation

1 financing contract, the legal representative must acknowledge in the contract that the
2 legal representative and the legal representative's employer and employees have not
3 received or paid a referral fee or any other consideration from or to the litigation financier
4 and have no obligation to do so in the future.

5 If the consumer's legal representative is a party to a litigation financing contract
6 related to the consumer's civil action, administrative proceeding, claim, or cause of action
7 that is the subject of the litigation financing contract, the legal representative must
8 disclose and deliver the litigation financing contract to the consumer.

9 Following the disclosure and delivery, the consumer shall sign an acknowledgement
10 that the consumer has read and understands the terms and conditions of the litigation
11 financing contract. The consumer must be provided with a copy of the acknowledgement.

12 **Section 11. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

13 Except as otherwise stipulated or ordered by a court of competent jurisdiction or
14 an administrative law judge, a ~~consumer or the consumer's~~ legal representative for a
15 ~~corporation, limited liability company, partnership, or trust~~ shall, without awaiting a
16 discovery request, disclose the litigation financing contract to:

17 (1) Each party to the civil action or administrative proceeding, or to each party's legal
18 representative; and

19 (2) Any known person with a preexisting contractual obligation to indemnify or defend
20 a party to the civil action or administrative proceeding.

21 The disclosure obligation arises when a civil action or an administrative proceeding
22 is filed in a court of competent jurisdiction or with an administrative agency.

23 After filing, the disclosure obligation is a continuing obligation, and within thirty
24 days of entering into a litigation financing contract or amending an existing litigation
25 financing contract, the consumer or the consumer's legal representative shall disclose any
26 new or amended litigation financing contract to the parties specified in this section.

27 The existence of the litigation financing contract and all participants or parties to a
28 litigation financing contract are permissible subjects of discovery in any civil action or
29 administrative proceeding for which litigation financing is provided ~~to a corporation,~~
30 ~~limited liability company, partnership, or trust~~ under the contract, after a civil action or an
31 administrative proceeding has been filed.

32 **Section 12. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

33 This Act does not apply to:

1 (1) Any litigation financing provided by an entity engaged in commerce or business
2 activity if the entity does not:

3 (a) Charge or collect any interest, fees, or other consideration;

4 (b) Retain or receive any financial interest in the outcome of the civil action,
5 administrative proceeding, claim, or cause of action; or

6 (c) Receive any right to recovery or payment from the amount of any judgment,
7 award, settlement, verdict, or other form of monetary relief obtained in the
8 civil action, administrative proceeding, claim, or cause of action; or

9 (2) A regulated lender that does not receive, in consideration for loaning money to any
10 person, a right to payment from the value of any proceeds or other consideration
11 realized from any judgment award, settlement, verdict, or other form of monetary
12 relief any person may receive or recover in relation to any civil action,
13 administrative proceeding, claim, or cause of action.

14 **Section 13. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

15 This Act applies to any civil action filed or certified as a class action in which
16 litigation financing is provided. A litigation financier owes a fiduciary duty to all class
17 members or intended beneficiaries of a certified class and shall act in a manner consistent
18 with the litigation financier's fiduciary duty throughout the civil action.

19 In addition to the disclosure requirements set forth in section 11 of this Act, the
20 legal representative of the putative class shall disclose to all parties, putative class
21 members, and the court any legal, financial, or other relationship between the legal
22 representative and the litigation financier. A class member is entitled to receive from the
23 class counsel a true and correct copy of the litigation financing contract on request.

24 **Section 14. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

25 A litigation financier is jointly and severally liable for any award or order imposing
26 or assessing costs or monetary sanctions against a consumer arising from or relating to
27 any civil action, administrative proceeding, claim, or cause of action for which the litigation
28 financier is providing litigation financing.

29 **Section 15. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

1 Any violation of this Act by the litigation financier renders the litigation financing
2 contract unenforceable by the litigation financier or any successor-in-interest to the
3 litigation financing contract.

4 **Section 16. That a NEW SECTION be added to a NEW CHAPTER in title 54:**

5 This Act applies to any civil action or administrative proceeding pending on or
6 commenced after July 1, 2025.

