

# SENATE BILL NO. 881

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

5808S.011

KRISTINA MARTIN, Secretary

## 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  
2 four new sections, to be known as sections 436.575, 436.580,  
3 436.585, and 436.590, to read as follows:

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

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

12 (2) "Foreign principal", any government, person, or  
13 entity described in the definition of "foreign principal" in  
14 the Foreign Agents Registration Act of 1938, 22 U.S.C. 611;

15 (3) "Litigation expenses", costs incurred to pursue a  
16 civil action, including, but not limited to, court costs,  
17 filing fees, attorney's fees, expert witness fees, travel  
18 expenses, and expenses related to identifying or soliciting

19 potential clients to participate in the litigation before,  
20 during, or after filing or resolving the civil action;

21 (4) "Litigation funder", a person or entity that  
22 enters a litigation funding agreement or any person or  
23 entity who has a direct or indirect right to receive  
24 compensation from a litigation funding agreement. A  
25 litigation funder does not include:

26 (a) A parent, sibling, spouse, grandparent,  
27 grandchild, or child related by blood, adoption, or marriage  
28 of the party being funded;

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

33 (c) A licensed or registered financial institution  
34 that does not receive, in consideration for loaning money to  
35 any person, a right to receive payment from the value of any  
36 proceeds or other consideration realized from any judgment,  
37 award, settlement, verdict, or other form of monetary relief  
38 any person may receive or recover in relation to any civil  
39 action;

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

47 (e) A person or entity that provides money to a party  
48 for litigation solely for purposes other than funding  
49 litigation expenses;

50 (5) "Litigation funding agreement", with respect to  
51 any civil action or group of civil actions, any written  
52 agreement:

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

56 (b) Which creates a direct or collateralized interest  
57 in the proceeds of a civil action or group of civil actions,  
58 by settlement, verdict, judgment, or otherwise, and whose  
59 interest is based, in whole or in part, on a funding-based  
60 obligation to the action or group of actions or the  
61 appearing counsel or any contractual co-counsel or the law  
62 firms of the counsel or co-counsel executed with:

63 (i) Any attorney representing a party;

64 (ii) Any co-counsel in the litigation with a  
65 contingent fee interest in the representation of that party;  
66 or

67 (iii) Any third-party who has a collateral-based  
68 interest in the contingency fees of the counsel or co-  
69 counsel firm related in whole or part to the fees derived  
70 from representing that party.

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

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

7 3. A person engaged in litigation funding in this  
8 state may not, directly or indirectly:

9 (1) Become affiliated with or maintain an affiliation  
10 with a principal or agent of a foreign principal; or

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

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

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

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

          436.590. 1. It shall be an unlawful practice pursuant  
2 to section 407.020 to violate any provision of section  
3 436.575 to 436.590, and pursuant to sections 407.010 to  
4 407.130, the violation shall be subject to penalties,  
5 remedies, and procedures provided in sections 407.010 to  
6 407.130. The remedies available in this section are  
7 cumulative and in addition to any other remedies available  
8 by law.

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

          3. The attorney general may institute a legal action  
13 to prohibit a person who violates any provision of section  
14 436.580 or 436.585 from providing litigation funding in this  
15 state.

16           4. A litigation funding agreement that is entered into  
17 in violation of section 436.580 is void and unenforceable.

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