

House Engrossed

litigation; financing; consumer protection; enforcement

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
Second Regular Session  
2024

# HOUSE BILL 2638

AN ACT

AMENDING TITLE 12, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 27;  
RELATING TO LITIGATION FINANCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, Arizona Revised Statutes, is amended by adding  
3 chapter 27, to read:

4 CHAPTER 27

5 LITIGATION FINANCING

6 ARTICLE 1. GENERAL PROVISIONS

7 12-3401. Definitions

8 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "ACTION" MEANS A CIVIL ACTION, ADMINISTRATIVE PROCEEDING, CLAIM  
10 OR OTHER CAUSE OF ACTION.

11 2. "CONSUMER" OR "FUNDED CONSUMER" MEANS ANY PERSON WHO HAS ENTERED  
12 INTO A LITIGATION FINANCING AGREEMENT OR WHOSE RECOVERY OR OUTCOME IN AN  
13 ACTION IS AFFECTED BY OR SUBJECT TO A LITIGATION FINANCING AGREEMENT.

14 3. "FOREIGN PERSON" MEANS A PERSON THAT IS NOT ANY OF THE  
15 FOLLOWING:

16 (a) A CITIZEN OF THE UNITED STATES.

17 (b) AN ALIEN LAWFULLY ADMITTED FOR PERMANENT RESIDENCE IN THE  
18 UNITED STATES.

19 (c) AN UNINCORPORATED ASSOCIATION WITH A MAJORITY NUMBER OF MEMBERS  
20 OF WHICH ARE CITIZENS OF THE UNITED STATES OR ALIENS LAWFULLY ADMITTED FOR  
21 PERMANENT RESIDENCE IN THE UNITED STATES.

22 (d) A CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, SOCIETY  
23 OR OTHER BUSINESS ENTITY THAT WAS FORMED OR INCORPORATED IN THE UNITED  
24 STATES.

25 4. "FOREIGN PRINCIPAL" MEANS ANY OF THE FOLLOWING:

26 (a) THE GOVERNMENT OR A GOVERNMENT OFFICIAL OF ANY COUNTRY OTHER  
27 THAN THE UNITED STATES.

28 (b) A POLITICAL SUBDIVISION OR POLITICAL PARTY OF A COUNTRY OTHER  
29 THAN THE UNITED STATES.

30 (c) A PARTNERSHIP, ASSOCIATION, CORPORATION, ORGANIZATION OR OTHER  
31 COMBINATION OF PERSONS ORGANIZED UNDER THE LAWS OR HAVING ITS PRINCIPAL  
32 PLACE OF BUSINESS IN A COUNTRY OTHER THAN THE UNITED STATES WHOSE SHARES  
33 OR OTHER OWNERSHIP INTEREST IS OWNED BY THE GOVERNMENT OR A GOVERNMENT  
34 OFFICIAL OF A COUNTRY OTHER THAN THE UNITED STATES OR OWNED BY A POLITICAL  
35 SUBDIVISION OR POLITICAL PARTY OF A COUNTRY OTHER THAN THE UNITED STATES.

36 5. "LICENSED HEALTH CARE PROVIDER" HAS THE SAME MEANING PRESCRIBED  
37 IN SECTION 12-561.

38 6. "LITIGATION FINANCIER" MEANS A PERSON THAT HAS ENTERED INTO A  
39 LITIGATION FINANCING AGREEMENT WITH A PARTY TO AN ACTION OR COUNSEL OF  
40 RECORD FOR A PARTY TO AN ACTION.

41 7. "LITIGATION FINANCING AGREEMENT" OR "LITIGATION FINANCING" MEANS  
42 ANY AGREEMENT WHERE A PERSON PROVIDES FINANCING, FUNDING, ADVANCING OR  
43 LOANING OF MONEY TO PAY FOR FEES, COSTS, EXPENSES OR ANY OTHER SUMS  
44 ARISING FROM OR IN ANY MANNER RELATED TO AN ACTION IN EXCHANGE FOR THE  
45 RIGHT TO RECEIVE REPAYMENT, INTEREST, FEES OR OTHER CONSIDERATION THAT

1 CUMULATIVELY EXCEEDS THE AMOUNT OF MONEY GIVEN BY THE PERSON AND THAT IS  
2 CONTINGENT IN ANY RESPECT ON THE OUTCOME OF AN ACTION OR ON THE OUTCOME OF  
3 ANY MATTER WITHIN A PORTFOLIO THAT INCLUDES THE ACTION AND INVOLVES THE  
4 SAME COUNSEL OR AFFILIATED COUNSEL, BUT EXCLUDING ANY OF THE FOLLOWING  
5 LOANS, AGREEMENTS, CONTRACTS OR ARRANGEMENTS ENTERED INTO WITH OR BY:

6 (a) A NAMED PARTY TO THE ACTION IF PAYMENTS MADE TO THE NAMED PARTY  
7 ARE PROVIDED EXCLUSIVELY FOR PERSONAL AND FAMILY USE AND ARE PROVIDED ON  
8 CONDITION THAT THEY ARE NOT TO BE USED FOR LEGAL FILINGS, LEGAL DOCUMENT  
9 PREPARATION AND DRAFTING, APPEALS, CREATION OF A LITIGATION STRATEGY,  
10 DRAFTING TESTIMONY OR OTHER EXPENSES DIRECTLY RELATED TO LITIGATION.

11 (b) A COUNSEL OF RECORD FOR LEGAL SERVICES PROVIDED ON A  
12 CONTINGENCY FEE BASIS OR ADVANCED LEGAL COSTS PROVIDED BY COUNSEL OF  
13 RECORD, WHERE THE SERVICES OR COSTS ARE PROVIDED BY A LEGAL COUNSEL OF  
14 RECORD IN ACCORDANCE WITH THE RULES OF PROFESSIONAL CONDUCT ADOPTED BY THE  
15 SUPREME COURT.

16 (c) A PERSON WITH A PREEXISTING CONTRACTUAL OBLIGATION TO INDEMNIFY  
17 OR DEFEND A PARTY TO THE ACTION OR A HEALTH INSURER WHO HAS PAID OR IS  
18 OBLIGATED TO PAY ANY SUMS FOR HEALTH CARE SERVICES RENDERED TO AN INJURED  
19 PERSON UNDER THE TERMS OF A HEALTH INSURANCE POLICY, PLAN OR AGREEMENT.

20 (d) A FINANCIAL INSTITUTION, AS DEFINED IN SECTION 6-101, FOR  
21 REPAYMENT OF LOANS MADE DIRECTLY TO A PARTY OR A PARTY'S COUNSEL WHEN  
22 REPAYMENT OF THE LOAN IS NOT CONTINGENT ON THE OUTCOME OF AN ACTION BY  
23 SETTLEMENT, JUDGMENT OR OTHERWISE OR ON THE OUTCOME OF ANY MATTER WITHIN A  
24 PORTFOLIO THAT INCLUDES THE ACTION AND INVOLVES THE SAME COUNSEL OR  
25 AFFILIATED COUNSEL.

26 (e) FUNDING THAT IS PROVIDED TO A NONPROFIT ORGANIZATION, IF THE  
27 NONPROFIT ORGANIZATION USES THE FUNDING TO SEEK RELIEF OTHER THAN  
28 COMPENSATORY DAMAGES IN EXCESS OF \$100,000 OR PUNITIVE DAMAGES, WHETHER AS  
29 A PARTY OR ON BEHALF OF A CLIENT OR MEMBER OF THE ORGANIZATION, AND  
30 IRRESPECTIVE OF WHETHER THE NONPROFIT ORGANIZATION SEEKS AN AWARD OF COSTS  
31 OR ATTORNEY FEES IN PROVIDING PRO BONO REPRESENTATION.

32 (f) FUNDING PROVIDED BY A NONPROFIT ORGANIZATION THAT IS EXEMPT  
33 FROM TAXATION UNDER 501(c)(3) OF THE UNITED STATES INTERNAL REVENUE CODE,  
34 BY GRANT OR OTHERWISE, TO SUPPORT THE PURSUIT OF LITIGATION THAT DOES NOT  
35 SEEK COMPENSATORY DAMAGES IN EXCESS OF \$100,000 OR PUNITIVE DAMAGES.

36 (g) A PERSON PROVIDING FUNDING TO A MEDICAL PRACTICE OR FACILITY  
37 SOLELY FOR ITS RECEIVABLES.

38 8. "NATIONAL SECURITY INTERESTS" MEANS THOSE INTERESTS THAT  
39 ENCOMPASS NATIONAL DEFENSE, FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE,  
40 INTERNATIONAL AND INTERNAL SECURITY AND FOREIGN RELATIONS OF THE UNITED  
41 STATES.

42 9. "PROPRIETARY INFORMATION" MEANS INFORMATION THAT IS DEVELOPED,  
43 CREATED OR DISCOVERED BY A PERSON OR THAT BECAME KNOWN BY OR WAS CONVEYED  
44 TO THE PERSON, THAT HAS COMMERCIAL VALUE IN THE PERSON'S BUSINESS,  
45 INCLUDING DOMAIN NAMES, TRADE SECRETS, COPYRIGHTS, IDEAS, TECHNIQUES,

1 INVENTIONS, WHETHER PATENTABLE OR NOT, AND OTHER INFORMATION OF ANY TYPE  
2 RELATING TO DESIGNS, CONFIGURATIONS, DOCUMENTATION, RECORDED DATA,  
3 SCHEMATICS, CIRCUITS, MASK WORKS, LAYOUTS, SOURCE CODE, OBJECT CODE,  
4 MASTER WORKS, MASTER DATABASES, ALGORITHMS, FLOW CHARTS, FORMULAE, WORKS  
5 OF AUTHORSHIP, MECHANISMS, RESEARCH, MANUFACTURE, IMPROVEMENTS, ASSEMBLY,  
6 INSTALLATION, INTELLECTUAL PROPERTY, INCLUDING PATENTS AND PATENT  
7 APPLICATIONS, AND INFORMATION CONCERNING THE PERSON'S ACTUAL OR  
8 ANTICIPATED BUSINESS, RESEARCH OR DEVELOPMENT OR THAT IS RECEIVED IN  
9 CONFIDENCE BY OR FOR THE PERSON FROM ANY OTHER SOURCE.

10 10. "SOVEREIGN WEALTH FUND" MEANS AN INVESTMENT FUND THAT IS OWNED  
11 OR CONTROLLED BY A FOREIGN PRINCIPAL OR AN AGENT OF A FOREIGN PRINCIPAL.

12 11. "TRADE SECRETS" HAS THE SAME MEANING PRESCRIBED IN SECTION  
13 44-401.

14 12-3402. Preserving consumer control and recoveries

15 A. A LITIGATION FINANCIER MAY NOT DIRECT OR MAKE ANY DECISIONS WITH  
16 RESPECT TO THE COURSE OF ANY ACTION THAT IS SUBJECT TO A LITIGATION  
17 FINANCING AGREEMENT OR ANY SETTLEMENT OR OTHER DISPOSITION THEREOF,  
18 INCLUDING DECISIONS CONCERNING APPOINTING OR CHANGING COUNSEL, CHOICE OF  
19 OR USE OF EXPERT WITNESSES AND LITIGATION STRATEGY. THE NAMED PARTY AND  
20 COUNSEL OF RECORD SHALL RETAIN ALL RIGHTS TO CONTROL AND DECISION-MAKING  
21 WITH REGARD TO THE ACTION.

22 B. A LITIGATION FINANCIER MAY NOT, DIRECTLY OR INDIRECTLY, RECEIVE  
23 A LARGER SHARE OF THE PROCEEDS OF AN ACTION THAN THE NAMED PARTIES TO THE  
24 ACTION THAT IS SUBJECT TO A LITIGATION FINANCING AGREEMENT.

25 C. IN A CLASS ACTION LITIGATION, THE COURT SHALL CONSIDER THE  
26 EXISTENCE OF LITIGATION FINANCING AND ANY RELATED CONFLICTS OF INTEREST  
27 WHEN DETERMINING WHETHER A CLASS REPRESENTATIVE OR CLASS COUNSEL WOULD  
28 ADEQUATELY AND FAIRLY REPRESENT THE INTERESTS OF THE CLASS.

29 D. IN MULTIDISTRICT LITIGATION, THE COURT SHALL CONSIDER THE  
30 EXISTENCE OF LITIGATION FINANCING AND ANY RELATED CONFLICTS OF INTEREST  
31 WHEN APPROVING OR APPOINTING COUNSEL TO LEADERSHIP POSITIONS. FOR THE  
32 PURPOSES OF THIS SUBSECTION, "LEADERSHIP POSITIONS" MEANS ANY LEAD  
33 COUNSEL, COLEAD COUNSEL, COMMON BENEFIT COUNSEL, STEERING COMMITTEE  
34 MEMBERSHIP, EXECUTIVE COMMITTEE MEMBERSHIP AND OTHER SIMILAR POSITIONS OR  
35 ROLES.

36 12-3403. Prohibited conduct

37 A LITIGATION FINANCIER MAY NOT DO ANY OF THE FOLLOWING:

38 1. PAY OR OFFER TO PAY A COMMISSION, REFERRAL FEE OR OTHER  
39 CONSIDERATION TO ANY PERSON, INCLUDING LEGAL COUNSEL, A LAW FIRM OR A  
40 LICENSED HEALTH CARE PROVIDER, FOR REFERRING A PERSON TO THE LITIGATION  
41 FINANCIER.

42 2. ASSIGN, INCLUDING SECURITIZING, A LITIGATION FINANCING AGREEMENT  
43 IN WHOLE OR IN PART.

44 3. BE ASSIGNED RIGHTS TO AN ACTION THAT IS SUBJECT TO A LITIGATION  
45 FINANCING AGREEMENT TO WHICH THAT LITIGATION FINANCIER IS A PARTY.

1           12-3404. Required disclosures

2           A. LEGAL COUNSEL WHO ENTERS INTO A LITIGATION FINANCING AGREEMENT  
3 MUST DELIVER A COPY OF THE LITIGATION FINANCING AGREEMENT TO ALL PERSONS  
4 LEGAL COUNSEL IS REPRESENTING IN THE SUBJECT ACTION WITHIN THIRTY DAYS  
5 AFTER THE EARLIER OF BEING RETAINED AS LEGAL COUNSEL OR ENTERING INTO THE  
6 LITIGATION FINANCING AGREEMENT.

7           B. EXCEPT AS OTHERWISE STIPULATED OR ORDERED BY A COURT OF  
8 COMPETENT JURISDICTION, A PARTY TO AN ACTION OR THE PARTY'S COUNSEL OF  
9 RECORD, WITHOUT AWAITING A DISCOVERY REQUEST AND WITHIN THIRTY DAYS AFTER  
10 COMMENCEMENT OF THE ACTION, SHALL DELIVER A COPY OF THE LITIGATION  
11 FINANCING AGREEMENT TO ALL THE FOLLOWING PERSONS:

12           1. ALL PARTIES TO THE ACTION OR TO THE PARTIES' COUNSELS OF RECORD.

13           2. THE COURT, AGENCY OR TRIBUNAL IN WHICH THE ACTION IS PENDING.

14           3. ANY KNOWN PERSON WITH A PREEXISTING CONTRACTUAL OBLIGATION TO  
15 INDEMNIFY OR DEFEND A PARTY TO THE ACTION, INCLUDING AN INSURER PROVIDING  
16 INDEMNIFICATION OR PAYING A PARTY'S DEFENSE COSTS.

17           4. FOR CLASS ACTIONS, ANY MEMBER OF THE CLASS ON REQUEST.

18           5. FOR MULTIDISTRICT LITIGATION CONSOLIDATED IN THIS STATE, ALL  
19 LEGAL COUNSEL APPROVED OR APPOINTED TO A LEADERSHIP POSITION.

20           C. EXCEPT AS OTHERWISE STIPULATED OR ORDERED BY A COURT OF  
21 COMPETENT JURISDICTION, A PARTY TO AN ACTION OR THE PARTY'S COUNSEL OF  
22 RECORD, WITHOUT AWAITING A DISCOVERY REQUEST AND WITHIN THIRTY DAYS AFTER  
23 COMMENCEMENT OF THE ACTION, SHALL DISCLOSE IN WRITING THE EXISTENCE AND  
24 NATURE OF ANY LEGAL, FINANCIAL OR OTHER RELATIONSHIP BETWEEN LEGAL COUNSEL  
25 FOR THE PARTY TO THE ACTION THAT IS SUBJECT TO A LITIGATION FINANCING  
26 AGREEMENT AND THE LITIGATION FINANCIER TO THE PERSONS LISTED IN SUBSECTION  
27 B, PARAGRAPHS 1, 2 AND 3 OF THIS SECTION.

28           D. IN ADDITION TO THE DISCLOSURES REQUIRED BY SUBSECTIONS B AND C  
29 OF THIS SECTION AND EXCEPT AS OTHERWISE STIPULATED OR ORDERED BY A COURT  
30 OF COMPETENT JURISDICTION, A PARTY TO AN ACTION OR THE PARTY'S LEGAL  
31 COUNSEL OF RECORD, WITHOUT AWAITING A DISCOVERY REQUEST AND WITHIN THIRTY  
32 DAYS AFTER COMMENCEMENT OF THE ACTION, SHALL DISCLOSE IN WRITING TO THE  
33 PERSONS LISTED IN SUBSECTION B, PARAGRAPHS 1, 2 AND 3 OF THIS SECTION AND  
34 TO THE UNITED STATES DEPARTMENT OF STATE AND UNITED STATES OFFICE OF THE  
35 ATTORNEY GENERAL THE NAME, ADDRESS AND CITIZENSHIP OR COUNTRY OF  
36 INCORPORATION OR REGISTRATION OF ANY FOREIGN PERSON, FOREIGN PRINCIPAL OR  
37 SOVEREIGN WEALTH FUND, OTHER THAN THE NAMED PARTIES OR LEGAL COUNSEL OF  
38 RECORD:

39           1. THAT HAS A RIGHT TO RECEIVE ANY PAYMENT THAT IS CONTINGENT IN  
40 ANY RESPECT ON THE OUTCOME OF THE ACTION BY SETTLEMENT, JUDGMENT OR  
41 OTHERWISE, OR ON THE OUTCOME OF ANY MATTER WITHIN A PORTFOLIO THAT  
42 INCLUDES THE ACTION AND INVOLVES THE SAME OR AFFILIATED LEGAL COUNSEL.

43           2. FROM WHICH MONEY THAT IS USED TO SATISFY ANY TERM OF THE  
44 LITIGATION FINANCING AGREEMENT HAS BEEN OR WILL BE DIRECTLY OR INDIRECTLY  
45 SOURCED, IN WHOLE OR IN PART.

1           3. THAT HAS RECEIVED OR IS ENTITLED TO RECEIVE PROPRIETARY  
2 INFORMATION OR INFORMATION AFFECTING NATIONAL SECURITY INTERESTS OBTAINED  
3 AS A RESULT OF THE ACTION.

4           E. THE DISCLOSURE OBLIGATIONS REQUIRED BY THIS SECTION ARE  
5 CONTINUING OBLIGATIONS AND ARE TRIGGERED ON ANY PARTY OR THE PARTY'S LEGAL  
6 COUNSEL OF RECORD ENTERING INTO A NEW LITIGATION FINANCING AGREEMENT OR  
7 AMENDING AN EXISTING LITIGATION FINANCING AGREEMENT.

8           F. PRIOR TO PRODUCTION OF A LITIGATION FINANCING AGREEMENT IN  
9 RESPONSE TO A DISCOVERY REQUEST, A PARTY MAY REQUEST AND A COURT MUST  
10 CONDUCT AN IN CAMERA REVIEW OF ANY THIRD PARTY PAYOR AGREEMENT TO  
11 ASCERTAIN WHETHER IT IS A LITIGATION FINANCING AGREEMENT AS DEFINED IN  
12 SECTION 12-3401, PARAGRAPH 7. A PARTY MAY REDACT ANY INFORMATION THAT MAY  
13 IDENTIFY THE THIRD-PARTY PAYOR BEFORE SUBMITTING THE AGREEMENT FOR IN  
14 CAMERA REVIEW. IF THE COURT CONCLUDES THAT THE AGREEMENT IS A LITIGATION  
15 FINANCING AGREEMENT, A PARTY MAY SEEK DISCOVERY OF THE LITIGATION FINANCE  
16 AGREEMENT AND ALL PARTIES TO THE LITIGATION FINANCE AGREEMENT.

17           G. THE DISCLOSURE OBLIGATIONS PRESCRIBED BY THIS SECTION APPLY TO  
18 CLASS ACTIONS AND MULTIDISTRICT LITIGATION.

19           12-3405. Consumer protection from adverse determinations

20           A. IN ANY LITIGATION FINANCING AGREEMENT, A LITIGATION FINANCIER  
21 MUST INDEMNIFY THE FUNDED CONSUMERS AGAINST ANY ADVERSE COSTS, ATTORNEY  
22 FEES, DAMAGES OR SANCTIONS THAT MAY BE ORDERED OR AWARDED IN ANY ACTION  
23 FOR WHICH THE LITIGATION FINANCIER IS PROVIDING LITIGATION FINANCING.

24           B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, INDEMNIFICATION IS  
25 NOT REQUIRED FOR ANY ADVERSE COSTS, ATTORNEY FEES, DAMAGES OR SANCTIONS  
26 THAT RESULT FROM THE CONSUMER'S INTENTIONALLY WRONGFUL CONDUCT.

27           12-3406. Violations; enforcement

28           A. A LITIGATION FINANCING AGREEMENT THAT IS ENTERED INTO IN  
29 VIOLATION OF THIS CHAPTER IS VOID.

30           B. A LITIGATION FINANCIER WHO VIOLATES SECTION 12-3402, 12-3403 OR  
31 12-3405 COMMITS AN UNLAWFUL PRACTICE UNDER SECTION 44-1522.

32           C. THE COURT SHALL DETERMINE SANCTIONS FOR ANY PARTY THAT FAILS TO  
33 MAKE THE DISCLOSURES REQUIRED BY SECTION 12-3404. AN EVASIVE OR  
34 INCOMPLETE DISCLOSURE SHALL BE TREATED AS A FAILURE TO MAKE THE REQUIRED  
35 DISCLOSURE.

36           Sec. 2. Applicability

37           This act applies to any civil action, administrative proceeding,  
38 claim or cause of action that is pending or commenced on or after the  
39 effective date of this act.

40           Sec. 3. Effective date

41           This act is effective from and after December 31, 2024.