

REFERENCE TITLE: litigation; financing; consumer protection; enforcement

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

## **HB 2638**

Introduced by  
Representative Grantham

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 THAT ESTABLISHES A RIGHT TO RECEIVE PAYMENT BY ANYONE AND  
43 THAT IS CONTINGENT IN ANY RESPECT ON THE OUTCOME OF AN ACTION OR ON THE  
44 OUTCOME OF ANY MATTER WITHIN A PORTFOLIO THAT INCLUDES THE ACTION AND  
45 INVOLVES THE SAME COUNSEL OR AFFILIATED COUNSEL, BUT EXCLUDING ANY OF THE

1 FOLLOWING LOANS, AGREEMENTS, CONTRACTS OR ARRANGEMENTS ENTERED INTO WITH  
2 OR BY:

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

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

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

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

23 (e) A NONPROFIT LEGAL ORGANIZATION THAT IS FUNDED BY PRIVATE DONORS  
24 AND THAT REPRESENTS CLIENTS ON A PRO BONO, NO-COST BASIS IF THE NONPROFIT  
25 LEGAL ORGANIZATION SEEKS ONLY INJUNCTIVE RELIEF ON BEHALF OF ITS  
26 CLIENTS. THIS CHAPTER DOES NOT AFFECT AWARDS OF COSTS OR ATTORNEY FEES TO  
27 NONPROFIT LEGAL ORGANIZATIONS IN THE PRO BONO, NO-COST PURSUIT OF  
28 INJUNCTIVE RELIEF.

29 8. "NATIONAL SECURITY INTERESTS" MEANS THOSE INTERESTS THAT  
30 ENCOMPASS NATIONAL DEFENSE, FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE,  
31 INTERNATIONAL AND INTERNAL SECURITY AND FOREIGN RELATIONS OF THE UNITED  
32 STATES.

33 9. "PROPRIETARY INFORMATION" MEANS INFORMATION THAT IS DEVELOPED,  
34 CREATED OR DISCOVERED BY A PERSON OR THAT BECAME KNOWN BY OR WAS CONVEYED  
35 TO THE PERSON, THAT HAS COMMERCIAL VALUE IN THE PERSON'S BUSINESS,  
36 INCLUDING DOMAIN NAMES, TRADE SECRETS, COPYRIGHTS, IDEAS, TECHNIQUES,  
37 INVENTIONS, WHETHER PATENTABLE OR NOT, AND OTHER INFORMATION OF ANY TYPE  
38 RELATING TO DESIGNS, CONFIGURATIONS, DOCUMENTATION, RECORDED DATA,  
39 SCHEMATICS, CIRCUITS, MASK WORKS, LAYOUTS, SOURCE CODE, OBJECT CODE,  
40 MASTER WORKS, MASTER DATABASES, ALGORITHMS, FLOW CHARTS, FORMULAE, WORKS  
41 OF AUTHORSHIP, MECHANISMS, RESEARCH, MANUFACTURE, IMPROVEMENTS, ASSEMBLY,  
42 INSTALLATION, INTELLECTUAL PROPERTY, INCLUDING PATENTS AND PATENT  
43 APPLICATIONS, AND INFORMATION CONCERNING THE PERSON'S ACTUAL OR  
44 ANTICIPATED BUSINESS, RESEARCH OR DEVELOPMENT OR THAT IS RECEIVED IN  
45 CONFIDENCE BY OR FOR THE PERSON FROM ANY OTHER SOURCE.

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

3           11. "TRADE SECRETS" HAS THE SAME MEANING PRESCRIBED IN SECTION  
4 44-401.

5           12-3402. Preserving consumer control and recoveries

6           A. A LITIGATION FINANCIER MAY NOT DIRECT OR MAKE ANY DECISIONS WITH  
7 RESPECT TO THE COURSE OF ANY ACTION THAT IS SUBJECT TO A LITIGATION  
8 FINANCING AGREEMENT OR ANY SETTLEMENT OR OTHER DISPOSITION THEREOF,  
9 INCLUDING DECISIONS CONCERNING APPOINTING OR CHANGING COUNSEL, CHOICE OF  
10 OR USE OF EXPERT WITNESSES AND LITIGATION STRATEGY. THE NAMED PARTY AND  
11 COUNSEL OF RECORD SHALL RETAIN ALL RIGHTS TO CONTROL AND DECISION-MAKING  
12 WITH REGARD TO THE ACTION.

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

16           C. IN A CLASS ACTION LITIGATION, THE COURT SHALL CONSIDER THE  
17 EXISTENCE OF LITIGATION FINANCING AND ANY RELATED CONFLICTS OF INTEREST  
18 WHEN DETERMINING WHETHER A CLASS REPRESENTATIVE OR CLASS COUNSEL WOULD  
19 ADEQUATELY AND FAIRLY REPRESENT THE INTERESTS OF THE CLASS.

20           D. IN MULTIDISTRICT LITIGATION, THE COURT SHALL CONSIDER THE  
21 EXISTENCE OF LITIGATION FINANCING AND ANY RELATED CONFLICTS OF INTEREST  
22 WHEN APPROVING OR APPOINTING COUNSEL TO LEADERSHIP POSITIONS. FOR THE  
23 PURPOSES OF THIS SUBSECTION, "LEADERSHIP POSITIONS" MEANS ANY LEAD  
24 COUNSEL, COLEAD COUNSEL, COMMON BENEFIT COUNSEL, STEERING COMMITTEE  
25 MEMBERSHIP, EXECUTIVE COMMITTEE MEMBERSHIP AND OTHER SIMILAR POSITIONS OR  
26 ROLES.

27           12-3403. Prohibited conduct

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

29           1. PAY OR OFFER TO PAY A COMMISSION, REFERRAL FEE OR OTHER  
30 CONSIDERATION TO ANY PERSON, INCLUDING LEGAL COUNSEL, A LAW FIRM OR A  
31 LICENSED HEALTH CARE PROVIDER, FOR REFERRING A PERSON TO THE LITIGATION  
32 FINANCIER.

33           2. ASSIGN, INCLUDING SECURITIZING, A LITIGATION FINANCING AGREEMENT  
34 IN WHOLE OR IN PART.

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

37           12-3404. Required disclosures

38           A. LEGAL COUNSEL WHO ENTERS INTO A LITIGATION FINANCING AGREEMENT  
39 MUST DELIVER A COPY OF THE LITIGATION FINANCING AGREEMENT TO ALL PERSONS  
40 LEGAL COUNSEL IS REPRESENTING IN THE SUBJECT ACTION WITHIN THIRTY DAYS  
41 AFTER THE EARLIER OF BEING RETAINED AS LEGAL COUNSEL OR ENTERING INTO THE  
42 LITIGATION FINANCING AGREEMENT.

43           B. EXCEPT AS OTHERWISE STIPULATED OR ORDERED BY A COURT OF  
44 COMPETENT JURISDICTION, A PARTY TO AN ACTION OR THE PARTY'S COUNSEL OF  
45 RECORD, WITHOUT AWAITING A DISCOVERY REQUEST AND WITHIN THIRTY DAYS AFTER

1 COMMENCEMENT OF THE ACTION, SHALL DELIVER A COPY OF THE LITIGATION  
2 FINANCING AGREEMENT TO ALL THE FOLLOWING PERSONS:

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

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

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

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

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

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

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

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

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

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

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

44 F. THE EXISTENCE OF A LITIGATION FINANCING AGREEMENT AND ALL  
45 PARTICIPANTS IN OR PARTIES TO THE LITIGATION FINANCING AGREEMENT ARE

1 PERMISSIBLE SUBJECTS FOR DISCOVERY IN ANY ACTION THAT IS SUBJECT TO A  
2 LITIGATION FINANCING AGREEMENT.

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

5 12-3405. Consumer protection from adverse determinations

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

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

13 12-3406. Violations; enforcement

14 A. A LITIGATION FINANCING AGREEMENT THAT IS ENTERED INTO IN  
15 VIOLATION OF THIS CHAPTER IS VOID.

16 B. A LITIGATION FINANCIER WHO VIOLATES SECTION 12-3402, 12-3403 OR  
17 12-3405 COMMITS AN UNLAWFUL PRACTICE UNDER SECTION 44-1522.

18 C. THE COURT SHALL DETERMINE SANCTIONS FOR ANY PARTY THAT FAILS TO  
19 MAKE THE DISCLOSURES REQUIRED BY SECTION 12-3404. AN EVASIVE OR  
20 INCOMPLETE DISCLOSURE SHALL BE TREATED AS A FAILURE TO MAKE THE REQUIRED  
21 DISCLOSURE.

22 Sec. 2. Applicability

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

26 Sec. 3. Effective date

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