

Senate Bill 69

By: Senators Kennedy of the 18th, Gooch of the 51st, Robertson of the 29th, Anavitarte of the 31st, Hatchett of the 50th and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 7 and Article 5 of Chapter 11 of Title 9 of the Official Code of Georgia  
2 Annotated, relating to banking and finance, and depositions and discovery under the  
3 "Georgia Civil Practice Act," respectively, so as to regulate third-party litigation financing  
4 practices in this state; to enact a new chapter regulating litigation financing practices; to  
5 provide for definitions; to require and provide for the registration of litigation financiers; to  
6 prohibit any person with relevant affiliations with foreign persons, foreign principals, or  
7 sovereign wealth funds from serving as litigation financiers; to require amended registration  
8 as a litigation financier; to provide for forms and filing fees; to provide for public disclosure  
9 of documents and information; to provide for prohibitions applicable to litigation financiers;  
10 to provide for joint and several liability for litigation financiers; to require litigation financing  
11 contracts to include indemnification provisions; to require litigation financing agreements  
12 to be memorialized in writing by litigation financing contracts; to provide for required  
13 provisions and disclosures to be included in litigation financing contracts; to require and  
14 provide for certain disclosures and acknowledgments in litigation financing agreements; to  
15 provide for exemptions; to provide for the cancellation of litigation financing agreements;  
16 to provide for penalties; to provide for the authority of the commissioner of banking and  
17 finance; to provide for the discovery of litigation financing agreements in civil actions; to

18 provide a short title; to provide for related matters; to provide for an effective date and  
19 applicability; to repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

22 This Act shall be known and may be cited as the "Georgia Courts Access and Consumer  
23 Protection Act."

24 **SECTION 2.**

25 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is  
26 amended by adding a new chapter to read as follows:

27 "CHAPTER 10

28 7-10-1.

29 As used in this chapter, the term:

30 (1) 'Affiliate' or 'affiliated' means a person that directly, or indirectly through one or more  
31 intermediaries, controls, is controlled by, or is under common control with another  
32 person.

33 (2) 'Commissioner' means the commissioner of banking and finance.

34 (3) 'Consumer' means any individual who resides, is present, or is domiciled in this state  
35 or who is or has standing to become a plaintiff, claimant, or complainant in a civil action,  
36 administrative proceeding, legal claim, or other legal proceeding or in pursuit of any  
37 claim or cause of action in this state.

38 (4) 'Department' means the Department of Banking and Finance.

39 (5) 'Entity' means any domestic or foreign corporation, partnership, limited partnership,  
40 limited liability company, trust, fund, plan, or any other business, enterprise, association,  
41 or organization of any kind or nature.

42 (6) 'Foreign person' means an individual or an entity that is not:

43 (A) A citizen of the United States;

44 (B) An alien lawfully admitted for permanent residence in the United States;

45 (C) An unincorporated association with a majority of members who are citizens of the  
46 United States or aliens lawfully admitted for permanent residence in the United States;

47 or

48 (D) A corporation that is incorporated in the United States.

49 (7) 'Foreign principal' means:

50 (A) The government or a government official of any country other than the United  
51 States;

52 (B) A political subdivision or political party of a country other than the United States;

53 or

54 (C) A partnership, association, corporation, organization, or other combination of  
55 persons organized under the laws of or having its principal place of business in a  
56 country other than the United States whose shares or other ownership interest is owned  
57 by the government or a government official of a country other than the United States  
58 or is owned by a political subdivision or political party of a country other than the  
59 United States.

60 (8) 'Legal representative' means any attorney, group of attorneys, or law firm duly  
61 licensed and authorized to practice law and to represent a consumer in a civil action,  
62 administrative proceeding, legal claim, or other legal proceeding seeking to recover  
63 damages in this state.

64 (9) 'Litigation financier' means any broker-dealer, institutional investor, issuer, or any  
65 other person engaged in or formed, created, or established for the purpose of engaging

66 in any kind of business or economic activity that involves providing litigation financing  
67 in exchange for consideration of any kind.

68 (10)(A) 'Litigation financing agreement' or 'litigation financing' means an agreement  
69 in which a litigation financier agrees to provide financing to a consumer or entity that  
70 is or has standing to become a party to or counsel of record for a civil action,  
71 administrative proceeding, legal claim, or other legal proceeding seeking to recover  
72 monetary damages, in exchange for a right to receive payment, which right is  
73 contingent in any respect on the outcome of such action, claim, or proceedings by  
74 settlement, judgment, or otherwise, or on the outcome of any matter within a portfolio  
75 that includes such action, claim, or proceedings and involves the same legal  
76 representative or affiliated representative.

77 (B) Such term shall not include:

78 (i) An agreement wherein a legal representative consents to provide legal services on  
79 a contingency fee basis or to advance his or her client's legal costs, and where such  
80 services or costs are provided by the legal representative in accordance with the  
81 Georgia Rules of Professional Conduct maintained and enforced by the State Bar of  
82 Georgia;

83 (ii) A preexisting contractual obligation to indemnify or defend a party to a civil  
84 action, administrative proceeding, legal claim, or other legal proceeding seeking to  
85 recover monetary damages, or any other legal proceeding;

86 (iii) Any obligation of a health insurer to pay any sums for healthcare for an injured  
87 person under the terms of a health insurance plan or agreement;

88 (iv) Any obligation to repay a financial institution, as such term is defined in Code  
89 Section 10-5A-1, for loans made directly to a party to a civil action, administrative  
90 proceeding, legal claim, or other legal proceeding seeking to recover monetary  
91 damages, or such party's legal representative, provided that such repayment of such  
92 loan is not contingent upon the outcome of such action, claim, or proceedings, or on

93 the outcome of any matter within a portfolio that includes such action, claim, or  
94 proceedings, and involves the same legal representative or affiliated legal  
95 representative; or

96 (v) Funding provided to a nonprofit organization that is funded by private donations,  
97 represents one or more clients on a pro-bono, no-cost basis, and seeks only injunctive  
98 relief on behalf of its clients; provided, however, that the provisions of this division  
99 shall not be construed to prohibit or otherwise affect any award of costs or attorney's  
100 fees to such nonprofit organization seeking only injunctive relief on behalf of a client  
101 that such nonprofit organization represents on a pro-bono, no-cost basis, or to such  
102 client.

103 (11) 'Litigation financing contract' or 'contract' means a written contract memorializing  
104 the terms and conditions of a litigation financing agreement.

105 (12) 'Sovereign wealth fund' means an investment fund owned or controlled by a foreign  
106 principal or an agent thereof.

107 7-10-2.

108 (a) It is unlawful for a person to engage in litigation financing in this state unless such  
109 person is registered as a litigation financier as provided under this Code section.

110 (b) If the person registering as a litigation financier is an entity:

111 (1) Such entity shall be authorized to do business in this state; and

112 (2) The entity's articles of incorporation, charter, articles of organization, certificate of  
113 limited partnership, or other organizational or governing document shall contain a  
114 statement that such entity is authorized to engage in the business of litigation financing  
115 and is registered as a litigation financier by the department pursuant to this Code section.

116 (c) To register as a litigation financier, a person shall file with the department a registration  
117 statement setting forth the following:

118 (1) The legal name of such person;

- 119 (2) The principal business address and preferred mailing address of such person;  
120 (3) The telephone number and email address through which such person may be  
121 contacted;  
122 (4) The name, principal business address, and preferred mailing address of such person's  
123 registered agent that is authorized to accept service of process on behalf of such person;  
124 (5) The name, principal business address, and citizenship or country of incorporation or  
125 registration of any foreign person, foreign principal, or sovereign wealth fund affiliated  
126 with the person seeking to register as a litigation financier under this Code section in any  
127 capacity directly or indirectly related to such person's litigation financing business; and  
128 (6) Any other information deemed necessary by the department.
- 129 (d) If the person seeking to register as a litigation financier is an entity, such entity shall  
130 file with the department a registration statement that provides, with respect to each person  
131 that directly or indirectly owns, controls, holds with the power to vote, or holds proxies  
132 representing 5 percent or more of the voting shares of the litigation financier, the following:
- 133 (1) The legal name of each such person;  
134 (2) The principal business address and preferred mailing address of each such person;  
135 (3) If the person is an individual:  
136 (A) Such individual's occupation;  
137 (B) Any offices and positions held with the person seeking to register as a litigation  
138 financier during the past five years;  
139 (C) Any conviction of a crime other than misdemeanor traffic violations during the  
140 past ten years; and  
141 (D) The name, principal business address, and citizenship or country of incorporation  
142 or registration of any foreign person, foreign principal, or sovereign wealth fund  
143 affiliated with such individual seeking to register as a litigation financier under this  
144 Code section in any capacity directly or indirectly related to such individual's litigation  
145 financing business;

- 146 (4) If the person is an entity:
- 147 (A) The nature of the entity's business operations during the past five years or a
- 148 description of the business intended to be undertaken by the entity and such entity's
- 149 subsidiaries, if any;
- 150 (B) A list of all individuals who are or who have been selected to become directors or
- 151 officers of the entity and each subsidiary of the entity, if any. Such list shall include for
- 152 each individual the information required by paragraph (3) of this subsection; and
- 153 (C) The name, principal business address, and citizenship or country of incorporation
- 154 or registration of any foreign person, foreign principal, or sovereign wealth fund
- 155 affiliated with the entity seeking to register as a litigation financier under this Code
- 156 section in any capacity directly or indirectly related to such entity's litigation financing
- 157 business; and
- 158 (5) Any other information deemed necessary by the department.
- 159 (e) No person shall be registered as a litigation financier or shall engage in litigation
- 160 financing in this state that is, in any capacity directly or indirectly related to such person's
- 161 litigation financing business, affiliated with any foreign person, foreign principal, or
- 162 sovereign wealth fund of a foreign government or foreign nongovernment person
- 163 designated by the United States Secretary of Commerce as a foreign adversary pursuant to
- 164 15 C.F.R. Section 7.4.
- 165 (f) A person subject to registration under this Code section shall file, within 30 days of any
- 166 change to the most recently filed registration or within 30 days of when such registration
- 167 becomes inaccurate or incomplete in any respect, an amended registration with the
- 168 department.
- 169 (g) The commissioner is authorized to prescribe the forms and the filing fees that he or she
- 170 deems necessary for the purposes of this chapter.
- 171 (h) All documents and information filed with the department pursuant to this Code section
- 172 are public records subject to disclosure pursuant to Article 4 of Chapter 18 of Title 50.

173 7-10-3.

174 (a) A litigation financier shall not:

175 (1) Direct, or make any decisions with respect to, the course of any civil action,  
176 administrative proceeding, legal claim, or other legal proceeding for which such litigation  
177 financier has provided litigation financing, or any settlement or other disposition thereof.

178 Such prohibition includes, but is not limited to, decisions in appointing or changing legal  
179 representatives, choice or use of expert witnesses, and litigation strategy. All rights to  
180 make decisions with respect to the course and settlement or other disposition of the  
181 subject civil action, administrative proceeding, legal claim, or other legal proceeding shall  
182 remain solely with the parties to such action, claim, or proceedings and their legal  
183 representatives. The provisions of this paragraph shall be strictly construed in favor of  
184 the consumer and against the litigation financier;

185 (2) Pay or offer commissions, referral fees, rebates, or other forms of consideration to  
186 any person, including, but not limited to, an attorney or any employee of an attorney or  
187 a law firm, in exchange for referring a consumer to a litigation financier;

188 (3) Accept any commissions, referral fees, rebates, or other forms of consideration from  
189 any person, including, but not limited to, an attorney or any employee of an attorney or  
190 a law firm, for providing any goods or rendering any services to the consumer;

191 (4) Contract for, receive, or recover, whether directly or indirectly, any amount greater  
192 than an amount equal to the share of the proceeds collectively recovered by the plaintiffs  
193 or claimants in a civil action, administrative proceeding, legal claim, or other legal  
194 proceeding seeking to recover monetary damages financed by a litigation financing  
195 agreement after the payment of any attorney's fees and costs owed in connection to such  
196 action, claim, or proceedings;

197 (5) Advertise false or misleading information regarding its products or services;

198 (6) Refer or require any consumer to hire or engage any person providing any goods or  
199 rendering any services to the consumer;

200 (7) Fail to promptly deliver a fully completed and signed litigation financing contract to  
201 the consumer and the consumer's legal representative;

202 (8) Attempt to secure a remedy or obtain a waiver of any remedy, including, but not  
203 limited to, compensatory, statutory, or punitive damages, that the consumer may or may  
204 not be entitled to pursue or recover otherwise;

205 (9) Offer or provide legal advice to the consumer;

206 (10) Assign or securitize a litigation financing agreement in whole or in part; or

207 (11) Report a consumer to a credit reporting agency if insufficient funds remain to repay  
208 the litigation financier in full from the proceeds received from any judgment, award,  
209 settlement, verdict, or other form of monetary relief obtained in a civil action,  
210 administrative proceeding, legal claim, or other legal proceeding that is the subject of the  
211 litigation financing agreement.

212 (b) No person that provides any goods or renders any services to the consumer shall have  
213 a financial interest in litigation financing provided by a litigation financier to such  
214 consumer, and no such person shall receive any commissions, referral fees, rebates, or  
215 other forms of consideration from any litigation financier or the litigation financier's agents,  
216 employees, owners, or affiliates.

217 7-10-4.

218 (a) A litigation financier shall be jointly and severally liable for any award or order  
219 imposing or assessing costs or monetary sanctions against a consumer arising from or  
220 relating to any civil action, administrative proceeding, legal claim, or other legal  
221 proceeding for which the litigation financier is providing litigation financing.

222 (b) In each litigation financing contract, the litigation financier shall agree to indemnify,  
223 and shall indemnify even without such agreement, the plaintiffs and claimants to the civil  
224 action, administrative proceeding, legal claim, or other legal proceeding that is the subject  
225 of such litigation financing agreement and such plaintiffs' and claimants' legal

226 representatives against any adverse costs, attorney's fees, damages, or sanctions that may  
227 be ordered or awarded against such persons in such action, claim, or proceedings; provided,  
228 however, that such indemnification shall not be required or enforceable for adverse costs,  
229 attorney's fees, damages, or sanctions that the litigation financier can show resulted from  
230 the intentional misconduct of such plaintiffs or claimants or their legal representatives.

231 7-10-5.

232 (a) The terms and conditions of a litigation financing agreement shall be set forth in a fully  
233 completed, written litigation financing contract with no material terms or conditions  
234 omitted, and such contract shall contain all material terms and conditions at the time it is  
235 signed by any party.

236 (b) Upon execution of a litigation financing contract, a litigation financier shall not amend  
237 the terms or conditions of the litigation financing agreement that is memorialized by such  
238 contract without full disclosure to and prior written consent of all parties to such litigation  
239 financing agreement.

240 (c) Each litigation financing contract shall set forth the name, principal business address,  
241 and preferred mailing address of the litigation financier on the first page of such contract,  
242 and the following disclosures shall be typed in at least 14 point bold font and placed clearly  
243 and conspicuously immediately above the consumer's signature line in the litigation  
244 financing contract:

245           'IMPORTANT DISCLOSURES -- PLEASE READ CAREFULLY

246 1. Right to Cancellation: You, the consumer, or your legal representative may cancel  
247 this litigation financing agreement without penalty or further obligation within  
248 five (5) business days from the date you sign this contract or the date you receive  
249 financing from the litigation financier, whichever date is later. You or your legal  
250 representative may cancel this litigation financing agreement by sending a notice of  
251 cancellation to the litigation financier and returning to the litigation financier any

252 funds received from the litigation financier at the litigation financier's preferred  
253 mailing address set forth on page 1 of this contract.

254 2. The maximum amount the litigation financier may receive or recover from any  
255 contingent payment provided for in this litigation financing agreement shall be no  
256 more than an amount equal to the share of the proceeds collectively recovered by the  
257 plaintiffs or claimants in a civil action, administrative proceeding, legal claim, or  
258 other legal proceeding seeking to recover monetary damages financed by this  
259 litigation financing agreement after the payment of any attorney's fees and costs owed  
260 in connection to such action, claim, or proceedings.

261 3. The litigation financier agrees that it has no right to, and will not demand, request,  
262 receive, or exercise any right to, influence, affect, or otherwise make any decision in  
263 the handling, conduct, administration, litigation, settlement, or resolution of your civil  
264 action, administrative proceeding, legal claim, other legal proceeding. All of these  
265 rights remain solely with you and your legal representative.

266 4. You, the consumer, are not required by the terms of this litigation financing  
267 agreement to continue to be represented by any particular legal representative, and the  
268 litigation financing agreement does not include any right for the litigation financier,  
269 any legal representative, or any other person to claim or seek to recover any  
270 assessment, charge, fee, penalty, or damages of any kind if you elect to change legal  
271 representatives at any time.

272 5. If there is no recovery of any money from your civil action, administrative  
273 proceeding, legal claim, or other legal proceeding, or if there is not enough money to  
274 satisfy in full the portion assigned to the litigation financier, you will not owe  
275 anything in excess of your recovery.

276 6. You are entitled to a fully completed litigation financing contract with no material  
277 terms or conditions omitted prior to signing. Before signing the litigation financing

278 contract, or authorizing anyone to sign it on your behalf, you should read the contract  
279 completely and consult an attorney.'

280 (d) Only the consumer shall be authorized to execute a litigation financing contract on his  
281 or her own behalf, except in such cases where the consumer lacks the legal capacity to  
282 execute a contract. The consumer's legal representative in the civil action, administrative  
283 proceeding, legal claim, or other legal proceeding seeking to recover monetary damages  
284 financed by the corresponding litigation financing agreement shall not execute a litigation  
285 financing contract on behalf of the consumer. A litigation financing contract executed by  
286 such legal representative on behalf of such consumer shall be void and unenforceable as  
287 a matter of law.

288 (e) If the consumer is represented by a legal representative in the civil action,  
289 administrative proceeding, legal claim, or other legal proceeding that is the subject of the  
290 litigation financing agreement, the legal representative shall acknowledge in the litigation  
291 financing contract that the legal representative and the legal representative's employer and  
292 employees have not received or paid a commission, referral fee, rebate, or any other  
293 consideration from or to the litigation financier and have no obligation to do so in the  
294 future.

295 (f) If the consumer's legal representative is a party to a litigation financing agreement  
296 related to the consumer's civil action, administrative proceeding, legal claim, or other legal  
297 proceeding that is the subject of the consumer's litigation financing agreement, the legal  
298 representative shall disclose and deliver a copy of his or her litigation financing contract  
299 to the consumer. Following such disclosure and delivery, the consumer shall sign an  
300 acknowledgment that the consumer has read and understands the terms and conditions of  
301 his or her legal representative's litigation financing contract. Such consumer shall be  
302 provided with a copy of such signed acknowledgment.

303 7-10-6.

304 The provisions of this chapter shall not apply to:

305 (1) A nonprofit entity that provides litigation financing, directly or indirectly, for the  
306 benefit of such nonprofit entity or one or more of its members without receiving, in  
307 consideration for the litigation financing:

308 (A) The payment of interest, fees, or other consideration; or

309 (B) Except for in-house counsel of such nonprofit entity, any right to recovery or  
310 payment from the amount of any judgment, award, settlement, verdict, or other form  
311 of monetary relief obtained in the civil action, administrative proceeding, legal claim,  
312 or other legal proceeding;

313 (2) Any litigation financing provided by an entity engaged in commerce or business  
314 activity; provided, however, that this exemption shall apply only if such entity does not:

315 (A) Charge, contract for, collect, or receive any interest, fees, or other consideration;

316 (B) Retain or receive any financial interest in the outcome of the civil action,  
317 administrative proceeding, legal claim, or other legal proceeding; or

318 (C) Retain or receive any right to recovery or payment from the amount of any  
319 judgment, award, settlement, verdict, or other form of monetary relief obtained in the  
320 civil action, administrative proceeding, legal claim, or other legal proceeding; or

321 (3) A regulated lender that does not receive, in consideration for loaning money to any  
322 person, a right to receive payment from the value of any proceeds or other consideration  
323 realized from any judgment award, settlement, verdict, or other form of monetary relief  
324 any person may receive or recover in relation to any civil action, administrative  
325 proceeding, legal claim, or other legal proceeding.

326 7-10-7.

327 Any violation of this chapter by a litigation financier renders the litigation financing  
328 agreement void and unenforceable by such litigation financier or any successor-in-interest  
329 to the litigation financing agreement.

330 7-10-8.

331 (a) It is unlawful for a litigation financier to enter into or offer to enter into a litigation  
332 financing agreement unless such litigation financier is registered under this chapter.

333 (b) A person that willfully violates this chapter shall be guilty of a felony and upon  
334 conviction thereof, shall be imprisoned not less than one nor more than five years, or fined  
335 not more than \$10,000.00, or both; provided, however, that on the recommendation of the  
336 jury trying the case, when such recommendation is approved by the judge presiding on the  
337 trial, such crime shall be punished as a misdemeanor. If the judge trying the case deems  
338 it proper, such judge may, in fixing the punishment, reduce such felony to a misdemeanor.

339 (c) The Attorney General or the proper prosecuting attorney with or without a reference  
340 from the commissioner may institute criminal proceedings under this chapter.

341 (d) This chapter does not limit the power of this state to punish a person for conduct that  
342 constitutes a crime under other laws of this state.

343 7-10-9.

344 The commissioner is authorized to adopt rules and other policies in overseeing the practice  
345 of litigation financing consistent with this chapter."

346 **SECTION 3.**

347 Article 5 of Chapter 11 of Title 9 of the Official Code of Georgia Annotated, relating to  
348 depositions and discovery under the "Georgia Civil Practice Act," is amended in Code

349 Section 9-11-26, relating to general provisions governing discovery, by adding a new  
350 paragraph to subsection (b) to read as follows:

351 "(2.1)(A) **Litigation financing agreement.** A party may obtain discovery of the  
352 existence and terms and conditions of any litigation financing agreement, as such term  
353 is defined in Code Section 7-10-1, the subject of which is or includes the pending  
354 action.

355 (B) Information concerning the litigation financing agreement is not by reason of  
356 disclosure admissible in evidence at trial; provided, however, that nothing in this  
357 subparagraph shall be construed to limit the admissibility of such information as  
358 evidence of a party's claim or defense;"

359

#### SECTION 4.

360 This Act shall become effective upon its approval by the Governor or upon its becoming law  
361 without such approval and shall apply to:

362 (1) Any civil action, administrative proceedings, legal claims, or other legal proceedings  
363 commenced on or after the effective date of this Act; and

364 (2) Any contracts entered into on or after the effective date of this Act.

365

#### SECTION 5.

366 All laws and parts of laws in conflict with this Act are repealed.