

House Bill 1244

By: Representatives Jones of the 25th, Gunter of the 8th, Powell of the 33rd, Wiedower of the 121st, Hilton of the 48th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, so as
2 to provide for the establishment of dispute financing provisions; to provide for a short title;
3 to provide for definitions; to provide for conflicts of interest in certain circumstances; to
4 provide for financier limitations; to provide for certain disclosures with foreign entities; to
5 provide for indemnification by dispute financiers; to provide for penalties; to provide for
6 application; to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
10 adding a new chapter to read as follows:

11 "CHAPTER 15A

12 9-15A-1.

13 This chapter shall be known and may be cited as the 'Georgia Intellectual Property
14 Protection Act.'

H. B. 1244

15 9-15A-2.

16 As used in this chapter, the term:

17 (1) 'Dispute financier' means a person engaged in the business of providing litigation
18 financing.

19 (2) 'Dispute financing agreement' or 'dispute financing' means a transaction in which a
20 dispute financier agrees to provide financing to a person who is a party to or counsel of
21 record for a civil action, administrative proceeding, claim, or other legal proceeding in
22 exchange for a right to receive payment, which right is contingent in any respect on the
23 outcome of such action, claim, or proceeding or on the outcome of any matter within a
24 portfolio that includes such action, claim, or proceeding and involves the same counsel
25 or affiliated counsel. Such term shall not include:

26 (A) An agreement wherein funds are provided for or to a party to a civil action,
27 administrative proceeding, claim, or other legal proceeding for such person's use in
28 paying his or her costs of living or other personal or familial expenses during the
29 pendency of such action, claim, or proceeding and where such funds are not used to
30 finance any litigation or other legal costs;

31 (B) An agreement wherein an attorney consents to provide legal services on a
32 contingency fee basis or to advance his or her client's legal costs, and where such
33 services or costs are provided by the attorney in accordance with the State Bar of
34 Georgia's Rules of Professional Conduct;

35 (C) An entity with a preexisting contractual obligation to indemnify or defend a party
36 to a civil action, administrative proceeding, claim, or other legal proceeding;

37 (D) A health insurer that has paid, or is obligated to pay, any sums for health care for
38 an injured person under the terms of a health insurance plan or agreement;

39 (E) The repayment of a financial institution, as defined in Code Section 7-1-239, for
40 loans made directly to a party to a civil action, administrative proceeding, claim, or
41 other legal proceeding or such party's attorney when repayment of the loan is not

42 contingent upon the outcome of such action, claim, or proceeding or on the outcome of
43 any matter within a portfolio that includes such action, claim, or proceeding and
44 involves the same counsel or affiliated counsel; or

45 (F) Funding provided to a nonprofit legal organization by private donors that represents
46 clients on a pro bono, no-cost basis, if the nonprofit legal organization seeks only
47 injunctive relief on behalf of its clients. This subparagraph shall not affect the award
48 of costs or attorney fees to a nonprofit legal organization in the pro bono, no-cost
49 pursuit of injunctive relief.

50 (3) 'Foreign person' means a person or an entity that is not:

51 (A) A citizen of the United States;

52 (B) A foreign national lawfully admitted for permanent residence in the United States;

53 (C) An unincorporated association, a majority of members of which are citizens of the
54 United States or foreign nationals lawfully admitted for permanent residence in the
55 United States; or

56 (D) A corporation incorporated in the United States.

57 (4) 'Foreign principal' means:

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

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

61 (C) A partnership, association, corporation, organization, or other combination of
62 persons organized under the laws of, or having its principal place of business in, a
63 country other than the United States whose shares are owned by, or that has other
64 ownership interest in, the government or a government official of a country other than
65 the United States or a political subdivision or political party of a country other than the
66 United States.

67 (6) 'National security interests' means those interests relating to the national defense,
68 foreign intelligence and counterintelligence, international and domestic security, and
69 foreign relations.

70 (7) 'Proprietary information' means information developed, created, or discovered by a
71 person, or which became known by or was conveyed to the person, which has
72 commercial value in the person's business. Such term includes, but is not limited to,
73 domain names, trade secrets, copyrights, ideas, techniques, inventions regardless of
74 patentability, and other information of any type relating to designs, configurations,
75 documentation, recorded data, schematics, circuits, mask works, layouts, source code,
76 object code, data bases, algorithms, flow charts, formulae, works of authorship,
77 mechanisms, research, manufacture, improvements, assembly, installation, intellectual
78 property including patents and patent applications, and information concerning the
79 person's actual or anticipated business, research, or development or received in
80 confidence by or for the person from any other source.

81 (8) 'Sovereign wealth fund' means an investment fund owned or controlled by a foreign
82 principal or an agent thereof.

83 9-15A-3.

84 A court may take the existence of a dispute financing agreement into account:

85 (1) In a class action lawsuit brought in the courts of this state when determining whether
86 a class representative or class counsel would adequately and fairly represent the interests
87 of the class; and

88 (2) In actions involving a common question of law or fact pending before the court
89 which may be or may have been consolidated when determining whether the lead counsel
90 or any co-counsel would adequately and fairly represent the interests of the parties to
91 such actions.

92 9-15A-4.

93 A dispute financier shall not:

94 (1) Direct, or make any decisions with respect to, the course of any civil action,
95 administrative proceeding, claim, or other legal proceeding for which the dispute
96 financier has provided financing, or any settlement or other disposition thereof. This
97 prohibition includes, but is not limited to, decisions in appointing or changing counsel,
98 choice or use of expert witnesses, and litigation strategy. All rights to make decisions
99 with respect to the course and settlement or other disposition of the subject civil action,
100 administrative proceeding, claim, or other legal proceeding remain solely with the parties
101 to such action, claim, or proceeding and their counsel of record;

102 (2) Contract for or receive, whether directly or indirectly, a larger share of the proceeds
103 of a civil action, administrative proceeding, claim, or other legal proceeding than the
104 share of the proceeds collectively recovered by the plaintiffs to any such action, claim,
105 or proceeding after the payment of any attorney fees and costs owed in connection to
106 such action, claim, or proceeding;

107 (3) Pay or offer to pay a commission, referral fee, or other consideration to any person,
108 including an attorney, law firm, or health care professional, as defined in Code Section
109 51-2-5.1, for referring a person to the dispute financier;

110 (4) Assign or securitize a dispute financing agreement in whole or in part; or

111 (5) Be assigned rights to or in a civil action, administrative proceeding, claim, or other
112 legal proceeding, other than the right to receive a share of the proceeds of such action,
113 claim, or proceeding pursuant to the dispute financing agreement.

114 9-15A-5.

115 (a) An attorney who enters into a dispute financing agreement shall disclose the existence
116 of and deliver a copy of the agreement to the client he or she represents in the civil action,
117 administrative proceeding, claim, or other legal proceeding financed by the agreement

118 within 30 days after being retained as counsel by such client or within 30 days after
119 entering into the dispute financing agreement, whichever is earlier.

120 (b) Except as otherwise stipulated to by the parties to a civil action, administrative
121 proceeding, claim, or other legal proceeding, or as otherwise ordered by a court of
122 competent jurisdiction, a party to or counsel of record for a civil action, administrative
123 proceeding, claim, or other legal proceeding who enters into a dispute financing agreement
124 with respect to such action, claim, or proceeding shall, without awaiting a discovery
125 request and within 30 days after commencement of such action, claim, or proceeding,
126 disclose the existence of and deliver a copy of the dispute financing agreement to the
127 following persons:

128 (1) All parties to the civil action, administrative proceeding, claim, or other legal
129 proceeding;

130 (2) The court, agency, or tribunal in which the civil action, administrative proceeding,
131 claim, or other legal proceeding is pending; or

132 (3) Any known person, including an insurer, with a preexisting contractual obligation to
133 indemnify or defend a party to the civil action, administrative proceeding, claim, or other
134 legal proceeding.

135 (c) In addition to complying with subsections (a) and (b) of this Code section, the lead
136 counsel of a putative class in a class action lawsuit for which dispute financing is obtained
137 shall disclose the existence of any legal, financial, or other relationship between the lead
138 counsel and the dispute financier that exists separate and apart from the dispute financing
139 agreement itself within 30 days after commencement of such action or within 30 days of
140 the execution of the dispute financing agreement, whichever is earlier, to the following
141 persons:

142 (1) All parties to the civil action, administrative proceeding, claim, or other legal
143 proceeding;

- 144 (2) The court, agency, or tribunal in which the civil action, administrative proceeding,
145 claim, or other legal proceeding is pending; or
- 146 (3) Any known person, including an insurer, with a preexisting contractual obligation to
147 indemnify or defend a party to the civil action, administrative proceeding, claim, or other
148 legal proceeding.
- 149 (d) The lead counsel in a class action or putative class action lawsuit for which dispute
150 financing is obtained shall, upon the request of a class member, disclose and deliver a copy
151 of the dispute financing agreement to the class member.
- 152 (e) In addition to complying with subsections (a) and (b) of this Code section, the lead
153 counsel and co-counsel, if any, for civil actions consolidated in the courts of this state shall
154 disclose the existence of and deliver a copy of any dispute financing agreement entered into
155 in connection with any of the consolidated actions to the following persons:
- 156 (1) All parties to the consolidated civil actions;
- 157 (2) The court, agency, or tribunal in which the civil actions are pending; or
- 158 (3) Any known person, including an insurer, with a preexisting contractual obligation to
159 indemnify or defend a party to the civil actions.
- 160 (f)(1) A party to a civil action, administrative proceeding, claim, or other legal
161 proceeding, or such party's counsel of record, shall, except as otherwise stipulated by the
162 parties to such action, claim, or proceeding or as otherwise ordered by a court of
163 competent jurisdiction, disclose as prescribed in paragraph (2) of this subsection the
164 name, address, and citizenship or country of incorporation or registration of any foreign
165 person, foreign principal, or sovereign wealth fund that:
- 166 (A) Obtained or will obtain a right to receive any payment that is contingent in any
167 respect on the outcome of such civil action, administrative proceeding, claim, or other
168 legal proceeding, or on the outcome of any matter within a portfolio that includes such
169 civil action, administrative proceeding, claim, or other legal proceeding and involves
170 the same counsel or affiliated counsel;

171 (B) Provided or will provide funds, whether directly or indirectly, which have been or
172 will be used to satisfy any term of a dispute financing agreement into which the party
173 or the party's counsel of record has entered to finance such civil action, administrative
174 proceeding, claim, or other legal proceeding; or

175 (C) Has received or is entitled to receive proprietary information or information
176 affecting national security interests obtained as a result of the financing of such civil
177 action, administrative proceeding, claim, or other legal proceeding by a dispute
178 financing agreement entered into by the party or the party's counsel of record.

179 (2) The disclosures required in paragraph (1) of this subsection shall be made to the
180 following persons:

181 (A) All parties to the civil action, administrative proceeding, claim, or other legal
182 proceeding;

183 (B) The court, agency, or tribunal in which the civil action, administrative proceeding,
184 claim, or other legal proceeding is pending;

185 (C) Any known person, including an insurer, with a preexisting contractual obligation
186 to indemnify or defend a party to the civil action, administrative proceeding, claim, or
187 other legal proceeding;

188 (D) The Department of Banking and Finance; and

189 (E) The office of the Attorney General.

190 (g) The fact of the existence of a dispute financing agreement and the identities of all
191 parties to the agreement are discoverable in any civil action, administrative proceeding,
192 claim, or other legal proceeding financed by such an agreement, unless the court, for good
193 cause shown, determines otherwise.

194 (h) The disclosure obligations in this Code section are ongoing obligations. Thus, when
195 a party to a civil action, administrative proceeding, claim, or other legal proceeding, or his
196 or her counsel of record:

197 (1) Enters into or amends a dispute financing agreement after the commencement of such
198 action, claim, or proceeding, the party or attorney has 30 days after the date of entering
199 into or amending the dispute financing agreement to comply with the disclosure
200 obligations established by this Code section; and

201 (2) Obtains information regarding the involvement of a foreign person, foreign principal,
202 or sovereign wealth fund after the commencement of such action, claim, or proceeding,
203 which involvement would require disclosure under this Code section, the party or
204 attorney has 30 days after the date of obtaining the information to comply with the
205 disclosure obligations established by this Code section.

206 9-15A-6.

207 In any dispute financing agreement, the dispute financier shall agree to indemnify the
208 plaintiffs to the civil action, administrative proceeding, claim, or other legal proceeding
209 funded in the agreement and such plaintiffs' counsel of record against any adverse costs,
210 attorney fees, damages, or sanctions that may be ordered or awarded against such persons
211 in such action, claim, or proceeding. However, indemnification is not required for those
212 adverse costs, attorney fees, damages, or sanctions that the dispute financier can show
213 resulted from the intentional misconduct of such plaintiffs or plaintiffs' counsel of record.

214 9-15A-7.

215 (a) A dispute financing agreement executed in violation of this chapter is void and
216 unenforceable.

217 (b)(1) A violation of Code Section 9-15A-4 or 9-15A-6 is a deceptive and unfair trade
218 practice actionable under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair Business
219 Practices Act of 1975.'

220 (2) A court, agency, or tribunal of competent jurisdiction may impose fines or any other
221 sanctions it deems appropriate upon any person who violates Code Section 9-15A-5.

222 9-15A-8.
223 The disclosure requirements in Code Section 9-15A-5 shall apply to any civil action,
224 administrative proceeding, claim, or other legal proceeding pending or commenced on or
225 after July 1, 2024. Any party to or counsel of record for a civil action, administrative
226 proceeding, claim, or other legal proceeding pending on July 1, 2024, who would have
227 been required to make a disclosure under Code Section 9-15A-5 had it been in effect at the
228 time the relevant action occurred, shall make the disclosure under that Code section within
229 30 days after July 1, 2024. Failure to do so shall be sanctionable as provided in Code
230 Section 9-15A-7."

231 **SECTION 2.**

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