

HOUSE No. 1182

The Commonwealth of Massachusetts

PRESENTED BY:

Danielle W. Gregoire

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to litigation financing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>1/17/2025</i>

HOUSE No. 1182

By Representative Gregoire of Marlborough, a petition (accompanied by bill, House, No. 1182) of Danielle W. Gregoire relative to regulation of litigation financing by the Division of Banks. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

An Act relative to litigation financing.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1: Chapter 167 of the General Laws is hereby amended by adding the
2 following Chapter after Chapter 167J:

3 Chapter 167K: Litigation Financing

4 Section 1. As used in this Chapter, the following terms shall have the following
5 meanings:

6 1. "Commercial litigation financier" means a person in the business of entering into
7 commercial litigation financing agreements with claimants or with lawyers or law firms asserting
8 legal claims on behalf of claimants. The term commercial litigation financier does not include a
9 nonprofit organization exempt from federal income tax under 501(c)(3) of the United States
10 Internal Revenue Code or its funders if the nonprofit organization represents the claimant on a
11 pro bono basis, which may include an award of costs or attorney fees to the nonprofit
12 organization or a related attorney.

13 2. "Commercial litigation financing agreement" -

14 (a) The term "commercial litigation financing agreement" means, with respect to any
15 civil action or group of civil actions, a written agreement—

16 (i) whereby a third party agrees to provide funds to one of the named parties or any law
17 firm affiliated with the action or group of civil actions, and

18 (ii) which creates a direct or collateralized interest in the proceeds of a civil action or
19 group of civil actions—by settlement, verdict, judgment or otherwise—and whose interest is
20 based in whole or part on a funding-based obligation to the action or group of actions or the
21 appearing counsel or any contractual co-counsel or the law firm(s) of the counsel or co-counsel
22 executed with:

23 (A) any attorney representing a party; or

24 (B) any co-counsel in the litigation with a contingent fee interest in the representation of
25 that party; or

26 (C) any third-party who has a collateral-based interest in the contingency fees of the
27 counsel or co-counsel firm related in whole or part to the fees derived from representing that
28 party.

29 (b) The term "litigation financing agreement" includes any contract, including any option,
30 forward contract, futures contract, short position, swap, or similar contract, or other agreement
31 that is substantially similar to a litigation financing agreement.

32 (c) The term "commercial litigation financing agreement" does not include:

33 (i) a non-recourse agreement in which a natural person or the estate of a natural person
34 assigns a contingent right to the potential proceeds of a settlement, judgment, award, or verdict
35 obtained from such person's legal claim so long as the agreement precludes the use of any
36 financed amount to pay legal fees, expert costs, or any other expenses directly related to
37 prosecution of the legal claim.

38 (ii) an agreement by an attorney or law firm to provide legal services on a contingency
39 fee basis to the claimant or to advance the claimant's legal costs in accordance with the Supreme
40 Judicial Court's Rules of Professional Conduct;

41 (iii) a health insurer, medical provider, or assignee that has paid, is obligated to pay, or is
42 owed any sums for a person's health care under the terms of a health insurance plan or
43 agreement;

44 (iv) a financial institution providing loans to the claimant or the claimant's attorney or
45 law firm when repayment is not contingent upon the outcome of the legal claim or on the
46 outcome of any matter within a portfolio that includes the legal claim and involves the same
47 attorney or law firm or affiliated attorney or law firm; or

48 (v) a person with a preexisting contractual obligation to indemnify or defend a party to a
49 legal claim.

50 3."Commissioner" means the Commissioner of the Division of Banks.

51 4. "Division" means the Division of Banks.

52 5. "Foreign country or person of concern" means a foreign government or person listed in
53 15 CFR 791.4 or a country designated as a threat to critical infrastructure by the governor.

- 54 6. "Foreign entity of concern" means an entity that:
- 55 (a) is organized or incorporated in a foreign country of concern;
- 56 (b) is owned or controlled by the government, a political subdivision, or a political party
- 57 of a foreign country of concern;
- 58 (c) has a principal place of business in a foreign country of concern;
- 59 (d) is owned, organized, or controlled by, affiliated with, or acting on behalf of an
- 60 individual or entity that is or has been:
- 61 (i) on a sanctions list maintained by the federal Office of Foreign Assets Control
- 62 including, but not limited to, the-
- 63 (A) Specially Designated Nationals and Blocked Persons List ("SDN List"),
- 64 (B) Foreign Sanctions Evaders List,
- 65 (C) Non-SDN Iran Sanctions Act List,
- 66 (D) Sectoral Sanctions Identifications List, or
- 67 (E) List of Foreign Financial Institutions Subject to Correspondent Account and Payable-
- 68 Through Account Sanctions; or
- 69 (ii) designated by the United States Secretary of State as a foreign terrorist organization.
- 70 7. "Legal claim" means a civil claim or cause of action.

71 Section 2. 1. A commercial litigation financier shall not enter into commercial litigation

72 financing agreements in this state or concerning litigation in this state unless it has first

73 registered with the state pursuant to this Chapter, except that a commercial litigation financier
74 that files for registration within 180 days of the effective date of this Chapter or when the
75 division first makes applications available to the public, whichever is later, may enter into
76 commercial litigation financing agreements while the company's registration is pending
77 approval.

78 2. An applicant's registration must be filed in the manner prescribed by Division of Banks
79 and must contain all the information required by the division to make an evaluation of the
80 character and fitness of the applicant, including but not limited to any beneficial ownership
81 exceeding twenty percent. Initial and renewal applications must be accompanied by fee to be
82 determined by the division. A registration must be renewed every two years and expires on the
83 thirty-first day of December.

84 3. A certificate of registration shall not be issued unless the division, upon investigation,
85 finds that the character and fitness of the applicant company or financier, and of the officers and
86 directors thereof, are such as to warrant belief that the business will be operated honestly and
87 fairly within the purposes of this Chapter.

88 4. Every registrant shall, at the time of filing such application, file with the division, if the
89 division so requires, a bond satisfactory to the division, in an amount set by the Commissioner.
90 In lieu of the bond, at the option of the registrant, the registrant may post an irrevocable letter of
91 credit. The terms of the bond must run concurrent with the period of time during which the
92 registration will be in effect. The bond must provide that the registrant will faithfully conform to
93 and abide by the provisions of this Chapter and to all rules lawfully made under this Chapter and
94 to any such person or persons any and all amounts of money that may become due or owing to

95 the state or to such person or persons from the registrant under and by virtue of this Chapter
96 during the period for which the bond is given.

97 5. Upon written request, the applicant shall be entitled to a hearing on the question of the
98 applicant's qualifications for registration if:

99 (a) the division has notified the applicant in writing that the application has been denied,
100 or

101 (b) the division has not issued a registration within sixty days after the application for the
102 registration was filed.

103 6. A request for a hearing shall not be made more than fifteen days after the division has
104 mailed a written notice to the applicant that the application has been denied and stating in
105 substance the divisions' findings supporting denial of the application.

106 Section 3. 1. Each commercial litigation financier that engages in business in the state
107 shall submit a report to the division of consumer affairs on the thirty-first day of December of
108 each year specifying the following:

109 (a) the number of litigation fundings by the company or financier that year;

110 (b) a summation of funded amounts in dollar figure that year; and

111 (c) the annual percentage charged to each funding recipient where repayment was made
112 that year.

113 2. The division shall make such information available to the public, in a manner which
114 maintains the confidentiality of the name of each company and consumer, no later than thirty
115 days after the reports are submitted.

116 Section 4. 1. A commercial litigation financier shall not enter into a commercial litigation
117 financing agreement directly or indirectly with or directly or indirectly financed by a foreign
118 entity of concern or a foreign country or person of concern.

119 2. No claimant, attorney or law firm representing a claimant, or affiliated attorney or law
120 firm shall disclose or share any documents or information with a commercial litigation financier
121 where such information is subject to a protective or sealing order from a court.

122 Section 5. A commercial litigation financier shall comply with the following consumer
123 protections:

124 1. A commercial litigation financier shall not make any decision, have any influence, or
125 direct any decisions with respect to the course of a legal claim, including decisions in appointing
126 or changing counsel, choice or use of expert witnesses, litigation strategy, and settlement or other
127 resolution. The right to make all decisions regarding a legal claim remains solely with the
128 claimant and the claimant's attorney or law firm.

129 2. A commercial litigation financier shall owe a fiduciary duty to each claimant whose
130 legal claim it has financed, including claims within a portfolio or group of claims that are within
131 the scope of a commercial litigation financing agreement.

132 3. Counsel to a claimant, contractual co-counsel, law firm(s) of the counsel or co-counsel,
133 or any other lawyer who directly or indirectly represents a claimant with respect to a legal claim

134 must disclose the existence of a commercial litigation finance agreement before undertaking
135 representation of the claimant and must, once retained or engaged, provide a copy of any
136 commercial litigation finance agreement, including any agreement with respect to a group or
137 portfolio of claims, to the claimant. Before entering into a new litigation finance agreement that
138 would result in a direct or indirect contingent interest in the outcome of a legal claim, any
139 attorney must secure written approval from the holder of the claim.

140 Section 6. 1. Except as otherwise stipulated or ordered by the court, a claimant or the
141 claimant's attorney shall, without awaiting a discovery request, provide to all parties any
142 commercial litigation financing agreement at the time a legal claim is asserted or commenced
143 and any time thereafter that a commercial litigation financing agreement is executed or amended.
144 An insurer that has or may have a duty to defend or indemnify a party to a legal claim shall be
145 provided with the commercial litigation financing agreement or any modifications or
146 amendments to the agreement.

147 2. Commercial litigation financing agreements and all participants or parties to such
148 agreements are permissible subjects of discovery in a legal claim.

149 Section 7. Communications between a party or counsel to a party and a commercial
150 litigation financier shall not be considered attorney client communications, attorney work
151 product, or otherwise afforded privilege other than communications solely concerning the status
152 of a legal claim or a legal claim's expected value, which shall not be discoverable by a person
153 against whom a legal claim is asserted or filed. Nothing in this section shall be construed to limit
154 the availability of measures, including confidentiality orders, normally available to protect
155 sensitive, non-privileged information.

156 Section 8. The Division of Banks is authorized to adopt rules and regulations necessary to
157 effectuate the purposes of this Chapter.

158 Section 9. This Act shall apply to any commercial litigation financing agreement that is
159 effectuated on or after the effective date of this Act.