

HOUSE No. 1861

The Commonwealth of Massachusetts

PRESENTED BY:

Adrian C. Madaro

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 providing transparency in third party litigation financing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Adrian C. Madaro</i>	<i>1st Suffolk</i>	<i>1/17/2025</i>

HOUSE No. 1861

By Representative Madaro of Boston, a petition (accompanied by bill, House, No. 1861) of
Adrian C. Madaro relative to third party litigation financing. The Judiciary.

The Commonwealth of Massachusetts

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

An Act providing transparency in third party 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, as appearing in the 2022 Official Edition,
2 is hereby amended by adding the 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. "Advertise" means publishing or disseminating any written, oral, electronic or printed
7 communication or any communication by means of recorded telephone messages or transmitted
8 or broadcast on radio, television, the internet or similar communications media, including audio
9 recordings, film strips, motion pictures and videos, published, disseminated, circulated or placed
10 before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a
11 consumer litigation funding.

12 2. "Charges" means the amount of money to be paid to the consumer litigation funding
13 company by or on behalf of the consumer, above the funded amount provided by or on behalf of
14 the company to a consumer pursuant to this Chapter. Charges include all administrative,
15 origination, underwriting or other fees, including interest, no matter how denominated. Such
16 charges shall annually not exceed 36% and a one-time document preparation fee as established
17 by the Division of Banks. Any contract which exceeds such rate shall be considered usurious as
18 defined by Chapter 271, Section 49 of the Massachusetts General Laws.

19 3. "Commercial litigation financier" means a person that enters into, or offers to enter
20 into, a commercial litigation financing agreement with a plaintiff or with lawyers or law firms
21 asserting legal claims on behalf of the plaintiff in a civil proceeding. The term does not include a
22 nonprofit organization exempt from federal income tax under section 501(c)(3) of the United
23 States Internal Revenue Code.

24 4. "Commercial litigation financing agreement":

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

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

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

34 (A) any attorney representing a party; or

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

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

40 (b) The term “litigation financing agreement” shall also include any contract, including
41 any option, forward contract, futures contract, short position, swap, or similar contract, or other
42 agreement that is substantially similar to a litigation financing agreement.

43 (c) The term does not include a consumer litigation funding transaction, an agreement
44 between an attorney and a client for the attorney to provide legal services on a contingency fee
45 basis or to advance the client's legal costs, a health insurance plan or agreement, a repayment
46 agreement of a financial institution if repayment is not contingent upon the outcome of the civil
47 proceeding, a funding agreement to a nonprofit organization that represents a client on a pro
48 bono basis, or an agreement of an assigned claim to prosecute an environmental contamination
49 matter seeking remediation of, or to recover the cost of remediating, a site that is or has been on
50 the U.S. Environmental Protection Agency’s Superfund National Priorities List.

51 5. “Commissioner” means the commissioner of the Division of Banks.

52 6. "Consumer" means a natural person who resides or is domiciled in Massachusetts or is
53 a plaintiff in a civil action in Massachusetts. The term includes estate for a decedent related to
54 wrongful death claims.

55 7. "Consumer litigation funding" means a non-recourse transaction in which a consumer
56 litigation funding company purchases, with funds paid directly to the consumer, and a consumer
57 assigns to the company a contingent right to receive an amount of the potential proceeds of a
58 settlement, judgment, award, or verdict obtained in the consumer's legal claim.

59 8. "Consumer litigation funding company" or "company" means a person or entity that
60 enters into a consumer litigation funding contract with a consumer. This term shall not include:

61 (a) an immediate family member of the consumer;

62 (b) a bank, lender, financing entity, or other special purpose entity:

63 (i) that provides financing to a consumer litigation funding company; or

64 (ii) to which a consumer litigation funding company grants a security interest or transfers
65 any rights or interest in a consumer litigation funding; or

66 (c) an attorney or accountant who provides services to a consumer.

67 9. "Division" means the Division of Banks.

68 10. "Foreign country or person of concern" includes the following:

69 (a) A foreign government or person listed in 15 CFR 791.4.

70 (b) A country designated as a threat to critical infrastructure by the governor.

71 11. "Foreign entity of concern" means a partnership, association corporation,
72 organization, or other combination of persons:

73 (a) organized or incorporated in a foreign country of concern;

74 (b) owned or controlled by the government, a political subsection, or a political party of a
75 foreign country of concern;

76 (c) that has a principal place of business in a foreign country of concern; or

77 (d) that is owned, organized, or controlled by or affiliated with a foreign organization that
78 has been:

79 (i) placed on the federal Office of Foreign Assets Control specially designated nationals
80 and blocked persons list (“SDN List”); or

81 (ii) designated by the United States Secretary of State as a foreign terrorist organization.

82 (e) “Foreign entity of concern” shall also include any individual that owns, has a
83 controlling interest in, or is a director or senior officer of any entity that falls within subsections
84 9(a) through (d) of this section.

85 12. "Funded amount" means the amount of monies provided to, or on behalf of, the
86 consumer in the consumer litigation funding contract. "Funded amount" excludes charges.

87 13. "Funding date" means the date on which the funded amount is transferred to the
88 consumer by the consumer litigation funding company either by personal delivery or via wire,
89 ACH or other electronic means or mailed by insured, certified or registered United States mail.

90 14. "Immediate family member" means a parent; sibling; child by blood, adoption, or
91 marriage; spouse; grandparent; or grandchild.

92 15. "Legal claim" means a civil claim or cause of action.

93 16. "Resolution date" means the date the funded amount, plus the agreed upon charges,
94 are delivered to the consumer litigation funding company by the consumer, the consumer's
95 attorney or otherwise.

96 Section 2 1. All consumer litigation funding contracts shall meet the following
97 requirements:

98 (a) a contract shall be written in a clear and coherent manner using words with common,
99 everyday meanings to enable the average consumer who makes a reasonable effort under
100 ordinary circumstances to read and understand the terms of the contract without having to obtain
101 the assistance of a professional;

102 (b) the contract shall be completely filled in when presented to the consumer for
103 signature;

104 (c) the contract shall contain, in twelve-point bold type font, a right of rescission,
105 allowing the consumer to cancel the contract without penalty or further obligation if, within ten
106 business days after the funding date, the consumer returns to the consumer litigation funding
107 company the full amount of the disbursed funds;

108 (d) the contract shall contain the initials of the consumer on each page;

109 (e) a statement that there are no fees or charges to be paid by the consumer other than
110 what is disclosed on the disclosure form;

111 (f) in the event the consumer seeks more than one litigation funding contract from the
112 same company, a disclosure providing the cumulative amount due from the consumer for all

113 transactions, including charges under all contracts, if repayment is made any time after the
114 contracts are executed;

115 (g) a statement of the maximum amount the consumer may be obligated to pay under the
116 contract other than in a case of material breach, fraud or misrepresentation by or on behalf of the
117 consumer; and

118 (h) clear and conspicuous detail of how charges, including any applicable fees, are
119 incurred or accrued.

120 2. The contract shall contain a written acknowledgement by the attorney retained by the
121 consumer in the legal claim that attests to the following:

122 (a) the attorney has reviewed the mandatory disclosures in Section 7 of this Chapter with
123 the consumer;

124 (b) the attorney is being paid on a contingency basis pursuant to a written fee agreement;

125 (c) all proceeds of the legal claim will be disbursed via either the trust account of the
126 attorney or a settlement fund established to receive the proceeds of the legal claim on behalf of
127 the consumer;

128 (d) the attorney is obligated to disburse funds from the legal claim and take any other
129 steps to ensure that the terms of the litigation funding contract are fulfilled;

130 (e) the attorney has not received a referral fee or other consideration from the consumer
131 litigation funding company in connection with the consumer litigation funding, nor will the
132 attorney receive such fee or other consideration in the future; and

133 (f) the attorney in the legal claim has provided no tax, public or private benefit planning,
134 or financial advice regarding this transaction.

135 3. In the event that the acknowledgement required pursuant to subsection two of this
136 section is not provided by the attorney or firm retained by the consumer in the legal claim, the
137 contract shall be null and void. The contract shall remain valid and enforceable in the event the
138 consumer terminates the initial attorney or retains a new attorney with respect to the legal claim.

139 4. Notwithstanding any law to the contrary, no prepayment penalties or fees shall be
140 charged or collected on consumer litigation funding. A prepayment penalty on consumer
141 litigation funding shall be unenforceable.

142 Section 3. 1. Consumer litigation funding companies shall be prohibited from:

143 (a) paying or offering to pay commissions, referral fees, or other forms of consideration
144 to any attorney, law firm, healthcare provider, chiropractor or physical therapist or any of their
145 employees for referring a consumer to the company;

146 (b) accepting any commissions, referral fees, rebates or other forms of consideration from
147 an attorney, law firm, healthcare provider, chiropractor or physical therapist or any of their
148 employees;

149 (c) intentionally advertising materially false or misleading information regarding its
150 products or services;

151 (d) referring, in furtherance of an initial legal funding, a customer or potential customer
152 to a specific attorney, law firm, healthcare provider, chiropractor or physical therapist or any of

153 their employees; provided, however, if a customer needs legal representation, the company may
154 refer the customer to a local or state bar association referral service;

155 (e) knowingly providing funding to a consumer who has previously assigned or sold a
156 portion of the consumer's right to proceeds from his or her legal claim without first making
157 payment to or purchasing a prior unsatisfied consumer litigation funding company's entire
158 funded amount and contracted charges, unless a lesser amount is otherwise agreed to in writing
159 by the consumer litigation funding companies, except that multiple companies may agree to
160 contemporaneously provide funding to a consumer provided that the consumer and the
161 consumer's attorney consent to the arrangement in writing;

162 (f) having any influence, receiving any right to, or making, any decisions with respect to
163 the conduct of the underlying legal claim or any settlement or resolution thereof. The right to
164 make such decisions shall remain solely with the consumer and the attorney in the legal claim;

165 (g) attempting to obtain a waiver of any remedy or right by the consumer, including but
166 not limited to the right to trial by jury; and

167 (h) knowingly paying or offering to pay for court costs, filing fees or attorney's fees
168 either during or after the resolution of the legal claim, using funds from the consumer litigation
169 funding transaction.

170 2. An attorney or law firm retained by the consumer in the legal claim shall not have a
171 financial interest in the consumer litigation funding company offering consumer litigation
172 funding to that consumer.

173 3. Any attorney who has referred the consumer to his or her retained attorney shall not
174 have a financial interest in the consumer litigation funding company offering consumer litigation
175 funding to that consumer.

176 4. The attorney may only disclose privileged information to the consumer litigation
177 funding company with the written consent of the consumer.

178 5. A consumer litigation funding company may not provide funding to a consumer
179 litigation funding transaction that is directly or indirectly financed by anyone included within
180 Section 3.(8) or (9).

181 Section 4. The contracted amount to be paid to the consumer litigation funding company
182 shall be a predetermined amount based upon intervals of time from the funding date through the
183 resolution date, and shall not be determined as a percentage of the recovery from the legal claim.

184 Section 5. 1. In a civil proceeding in which a plaintiff enters into a consumer litigation
185 financing agreement, and thus the contracted funds are not provided for the prosecution of the
186 litigation, the plaintiff or the plaintiff's attorney shall provide to each of the other parties in the
187 civil proceeding, and each insurer that has a duty to defend another party in the civil proceeding,
188 written notice that the plaintiff has entered into a consumer litigation funding contract.

189 2. In a civil proceeding in which a plaintiff enters into a consumer litigation funding
190 contract, the contents of the consumer litigation funding contract are subject to discovery under
191 the Massachusetts Rules of Civil Procedure and Evidence, subject to this legislative finding that
192 said contents are relevant to the civil proceeding, by a party other than the plaintiff, or an insurer
193 that has a duty to defend another party in the civil proceeding.

194 3. A plaintiff or the plaintiff's attorney shall provide the written notice required by
195 subsection 1. of this section within 30 days after the date on which the consumer litigation
196 funding contract was executed.

197 4. The written notice provided under subsection 1. of this section is presumed not
198 admissible as evidence in a court proceeding, subject to rebuttal

199 5. All consumer litigation funding contracts shall contain the disclosures specified in this
200 section, which shall constitute material terms of the contract. Unless otherwise specified, such
201 disclosures shall be typed in at least twelve-point bold type font and be placed clearly and
202 conspicuously within the contract, as follows:

203 (a) On the front page under appropriate headings, language specifying:

204 (i) the funded amount to be paid to the consumer by the consumer litigation funding
205 company;

206 (ii) an itemization of one-time charges;

207 (iii) the maximum total amount to be assigned by the consumer to the company,
208 including the funded amount and all charges; and

209 (iv) a payment schedule to include the funded amount and charges, listing all dates and
210 the amount due at the end of each six month period from the funding date, until the date the
211 maximum amount due to the company pursuant to the contract is paid.

212 (b) Pursuant to the provisions set forth in this section, within the body of the contract:

213 "Consumer's right to cancellation: you may cancel this contract without penalty or further

214 obligation within ten business days after the funding date if you return to the consumer litigation
215 funding company the full amount of the disbursed funds."

216 (c) The consumer litigation funding company shall have no role in deciding whether,
217 when and how much the legal claim is settled for, however, the consumer and consumer's
218 attorney must notify the company of the outcome of the legal claim by settlement or adjudication
219 prior to the resolution date. The company may seek updated information about the status of the
220 legal claim but in no event shall the company interfere with the independent professional
221 judgement of the attorney in the handling of the legal claim or any settlement thereof.

222 (d) Within the body of the contract, in all capital letters in at least twelve-point bold type
223 font contained within a box: "THE FUNDED AMOUNT AND AGREED UPON CHARGES
224 SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL
225 BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM
226 YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE CONSUMER
227 LITIGATION FUNDING COMPANY) ANYTHING IF THERE ARE NO PROCEEDS FROM
228 YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF
229 THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST (INSERT NAME OF
230 CONSUMER LITIGATION FUNDING COMPANY)."

231 (e) Located immediately above the place on the contract where the consumer's signature
232 is required, in twelve-point bold type font: "Do not sign this contract before you read it
233 completely. Do not sign this contract if it contains any blank spaces. You are entitled to a
234 completely filled-in copy of the contract before you sign this contract. You should obtain the
235 advice of any attorney. Depending on the circumstances, you may want to consult a tax, public

236 or private benefits planning, or financial professional. You acknowledge that your attorney in the
237 legal claim has provided no tax, public or private benefit planning, or financial advice regarding
238 this transaction. You further acknowledge that your attorney has explained the terms and
239 conditions of the consumer litigation funding contract."

240 (f) A copy of the executed contract shall promptly be delivered to the attorney for the
241 consumer.

242 Section 6. 1. Any consumer litigation funding company found in willful violation of any
243 provision of this article in a specific funding case:

244 (a) waives its right to recover both the funded amount and any and all charges, as defined
245 in Section 3 of this Chapter, in that particular case; and

246 (b) shall be liable for a civil penalty for each violation, which shall accrue to the general
247 fund and may be recovered in a civil action brought by the attorney general.

248 2. Nothing in this Chapter shall be construed to restrict the exercise of powers or the
249 performance of the duties of the Massachusetts attorney general, which he or she is authorized to
250 exercise or perform by law.

251 Section 7. 1. The contingent right to receive an amount of the potential proceeds of a
252 legal claim is assignable by a consumer to a consumer litigation funding company.

253 2. Only attorney's liens related to the legal claim which is the subject of the consumer
254 litigation funding or Medicare or other statutory liens related to the legal claim shall take priority
255 over any lien of the consumer litigation funding company.

256 Section 8. Communications between a consumer's attorney and a consumer litigation
257 funding company to allow the consumer litigation funding company to ascertain the status of a
258 legal claim or a legal claim's expected value shall not be discoverable by a person against whom
259 the legal claim is asserted or filed.

260 Section 9. 1. Unless a consumer litigation funding company or commercial litigation
261 financier has first registered with the Division of Banks pursuant to this Chapter, the company or
262 financier may not engage in the business of consumer or commercial litigation funding in this
263 state.

264 2. An applicant's registration must be filed in the manner prescribed by the commissioner
265 of the Division of Banks and must contain all the information required by the division to make
266 an evaluation of the character and fitness of the applicant company or financier, including but not
267 limited to any beneficial ownership exceeding 20%. The initial application must be accompanied
268 by a fee established by the commissioner. A renewal registration must include a fee established
269 by the commissioner. A registration must be renewed every two years and expires on the thirtieth
270 of September.

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

275 4. Every registrant shall also, at the time of filing such application, file with the division,
276 if the division so requires, a bond satisfactory to the division. In lieu of the bond at the option of
277 the registrant, the registrant may post an irrevocable letter of credit. The terms of the bond must

278 run concurrent with the period of time during which the registration will be in effect. The bond
279 must provide that the registrant will faithfully conform to and abide by the provisions of this
280 Chapter and to all rules lawfully made by the administrator under this Chapter and to any such
281 person or persons any and all amounts of money that may become due or owing to the state or to
282 such person or persons from the registrant under and by virtue of this Chapter during the period
283 for which the bond is given.

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

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

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

290 6. A request for a hearing may not be made more than fifteen days after the department
291 has mailed a written notice to the applicant that the application has been denied and stating in
292 substance the division findings supporting denial of the application.

293 7. Notwithstanding the prior approval requirement of subsection 1 of this section, a
294 consumer litigation funding company or commercial litigation financier that registered with the
295 division between the effective date of this article or when the division has made applications
296 available to the public, whichever is later, and one hundred eighty days thereafter may engage in
297 consumer or commercial litigation funding while the registration is pending approval with the
298 division. All funding and financing agreements entered into prior to the effective date of this
299 Chapter are not subject to the terms of this Chapter.

300 8. No consumer litigation funding company or commercial litigation financier may use
301 any form of consumer litigation funding or commercial litigation funding contract in this state
302 unless it has been filed with the division in accordance with the filing procedures set forth by the
303 commissioner of the division. Such procedures shall designate a reasonable timeframe for the
304 state to raise objections to any filed form.

305 9. The commissioner of the division is hereby authorized to adopt rules and regulations
306 to implement the provisions of this section as needed.

307 Section 10. 1. Each consumer litigation funding company and commercial litigation
308 financier that engages in business in the state shall submit a report to the division no later than
309 the thirty-first of January of each year specifying:

310 (a) number of litigation fundings by the company or financier;

311 (b) summation of funded amounts in dollar figure; and

312 (c) annual percentage charged to each consumer or commercial funding recipient where
313 repayment was made.

314 2. The division shall make such information available to the public, in a manner which
315 maintains the confidentiality of the name of each company, financier, customer, and consumer,
316 no later than ninety days after the reports are submitted.

317 Section 11. A commercial litigation financier may not enter into a commercial litigation
318 financing agreement directly or indirectly with a foreign entity of concern, or a foreign country
319 or person of concern.

320 Section 12. A party or an attorney or law firm for a party shall not disclose or share any
321 documents or information subject to a court order to seal or protect that is received in the course
322 of the civil proceeding with a commercial litigation financier.

323 Section 13. A commercial litigation financier may not make any decision, have any
324 influence, or direct the plaintiff or the plaintiff's attorney with respect to the conduct of the
325 underlying civil proceeding or any settlement or resolution of the civil proceeding, or make any
326 decision with respect to the conduct of the underlying civil proceeding or any settlement or
327 resolution of the civil proceeding. The right to make these decisions remains solely with the
328 plaintiff and the plaintiff's attorney in the civil proceeding.

329 Section 14. 1. A party or his or her counsel shall, without awaiting a discovery request,
330 provide to the other parties, and each insurer that has a duty to defend another party in the civil
331 proceeding, any agreement under which any commercial litigation financier, other than an
332 attorney permitted to charge a contingent fee representing a party, has a right to receive
333 compensation that is contingent in any respect on the outcome of the legal claim.

334 2. Commercial litigation financing agreements shall be admissible at trial.

335 3. A plaintiff or the plaintiff's attorney shall provide the agreement required by
336 subsection 1. of this section within a reasonable time after the date on which the commercial
337 litigation financing agreement was executed.

338 Section 15. If any provision of this Chapter is, for any reason, declared unconstitutional
339 or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be
340 deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the

341 remaining portions of this Chapter, which remaining portions shall continue in full force and
342 effect.

343 Section 16. The division of banks shall have authority to promulgate rules necessary to
344 effectuate the purposes of this Chapter.

345 SECTION 2. This Act shall take effect 90 days after the Governor's signature; provided,
346 however, it shall not apply or in any way affect or invalidate any consumer or commercial
347 litigation funding previously effectuated prior to the effective date of this Act.