

# SENATE . . . . . No. 680

---

## The Commonwealth of Massachusetts

---

PRESENTED BY:

*Nick Collins*

---

*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 to provide transparency in third party litigation financing.

---

PETITION OF:

NAME:

*Nick Collins*

DISTRICT/ADDRESS:

*First Suffolk*

# SENATE . . . . . No. 680

---

By Mr. Collins, a petition (accompanied by bill, Senate, No. 680) of Nick Collins for legislation to provide transparency in third party litigation financing. Financial Services.

---

## The Commonwealth of Massachusetts

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

An Act to provide 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 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           Section 1. As used in this Chapter, the following terms shall have the following  
7 meanings:

8           1. "Advertise" means publishing or disseminating any written, oral, electronic or printed  
9 communication or any communication by means of recorded telephone messages or transmitted  
10 or broadcast on radio, television, the internet or similar communications media, including audio  
11 recordings, film strips, motion pictures and videos, published, disseminated, circulated or placed

before the public, directly or indirectly, for the purpose of inducing a consumer to enter into a consumer litigation funding.

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

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

4. "Commercial litigation financing agreement":

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

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

(ii) which creates a direct or collateralized interest in the proceeds of a civil action or group of civil actions—by settlement, verdict, judgment or otherwise—and whose interest is

based in whole or part on a funding-based obligation to the action or group of actions or the appearing counsel or any contractual co-counsel or the law firm(s) of the counsel or co-counsel executed with:

(A) any attorney representing a party; or

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

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

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

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

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

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

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

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

(a) an immediate family member of the consumer;

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

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

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

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

9. "Division" means the Division of Banks.

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

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

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

11. “Foreign entity of concern” means a partnership, association corporation,  
organization, or other combination of persons:

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

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

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

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

(i) placed on the federal Office of Foreign Assets Control specially

designated nationals and blocked persons list (“SDN List”); or

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

organization.

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

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

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

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

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

16. "Resolution date" means the date the funded amount, plus the agreed upon charges, are

delivered to the consumer litigation funding company by the consumer, the consumer's attorney or otherwise.

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

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

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

(c) the contract shall contain, in twelve-point bold type font, a right of rescission, allowing the consumer to cancel the contract without penalty or further obligation if, within ten

110 business days after the funding date, the consumer returns to the consumer litigation funding  
111 company the full amount of the disbursed funds;

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

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

115 (f) in the event the consumer seeks more than one litigation funding contract from the  
116 same company, a disclosure providing the cumulative amount due from the consumer for all  
117 transactions, including charges under all contracts, if repayment is made any time after the  
118 contracts are executed;

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

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

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

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

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



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

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

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

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

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

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

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

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

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

153 (c) intentionally advertising materially false or misleading information regarding its  
154 products or services;

155 (d) referring, in furtherance of an initial legal funding, a customer or potential customer  
156 to a specific attorney, law firm, healthcare provider, chiropractor or physical therapist or any of  
157 their employees; provided, however, if a customer needs legal representation, the company may  
158 refer the customer to a local or state bar association referral service;

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

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

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

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

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

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

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

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

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

Section 5. 1. In a civil proceeding in which a plaintiff enters into a consumer litigation financing agreement, and thus the contracted funds are not provided for the prosecution of the litigation, the plaintiff or the plaintiff's attorney shall provide to each of the other parties in the

civil proceeding, and each insurer that has a duty to defend another party in the civil proceeding,  
written notice that the plaintiff has entered into a consumer litigation funding contract.

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

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

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

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

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

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

(ii) an itemization of one-time charges;

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

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

(b) Pursuant to the provisions set forth in this section, within the body of the contract: "Consumer's right to cancellation: you may cancel this contract without penalty or further obligation within ten business days after the funding date if you return to the consumer litigation funding company the full amount of the disbursed funds."

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

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

233 THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST (INSERT NAME OF  
234 CONSUMER LITIGATION FUNDING COMPANY)."

235 (e) Located immediately above the place on the contract where the consumer's signature  
236 is required, in twelve-point bold type font: "Do not sign this contract before you read it  
237 completely. Do not sign this contract if it contains any blank spaces. You are entitled to a  
238 completely filled-in copy of the contract before you sign this contract. You should obtain the  
239 advice of any attorney. Depending on the circumstances, you may want to consult a tax, public  
240 or private benefits planning, or financial professional. You acknowledge that your attorney in the  
241 legal claim has provided no tax, public or private benefit planning, or financial advice regarding  
242 this transaction. You further acknowledge that your attorney has explained the terms and  
243 conditions of the consumer litigation funding contract."

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

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

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

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

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

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

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

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

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

2. An applicant's registration must be filed in the manner prescribed by the commissioner of the Division of Banks and must contain all the information required by the division to make an evaluation of the character and fitness of the applicant company or financier, including but not limited to any beneficial ownership exceeding 20%. The initial application must be accompanied by a fee established by the commissioner. A renewal registration must include a fee established

273 by the commissioner. A registration must be renewed every two years and expires on the thirtieth  
274 of September.

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

279 4. Every registrant shall also, at the time of filing such application, file with the division,  
280 if the division so requires, a bond satisfactory to the division. In lieu of the bond at the option of  
281 the registrant, the registrant may post an irrevocable letter of credit. The terms of the bond must  
282 run concurrent with the period of time during which the registration will be in effect. The bond  
283 must provide that the registrant will faithfully conform to and abide by

284 the provisions of this Chapter and to all rules lawfully made by the administrator under  
285 this Chapter and to any such person or persons any and all amounts of money that may become  
286 due or owing to the state or to such person or persons from the registrant under and by virtue of  
287 this Chapter during the period for which the bond is given.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

Section 14. 1. A party or his or her counsel shall, without awaiting a discovery request, provide to the other parties, and each insurer that has a duty to defend another party in the civil proceeding, any agreement under which any commercial litigation financier, other than an

336 attorney permitted to charge a contingent fee representing a party, has a right to receive  
337 compensation that is contingent in any respect on the outcome of the legal claim.

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

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

342 Section 15. If any provision of this Chapter is, for any reason, declared unconstitutional  
343 or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be  
344 deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the  
345 remaining portions of this Chapter, which remaining portions shall continue in full force and  
346 effect.

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

349 Section 17. This Act shall take effect 90 days after the Governor's signature; provided,  
350 however, it shall not apply or in any way affect or invalidate any consumer or commercial  
351 litigation funding previously effectuated prior to the effective date of this Act.