

Amendment to HB 733-FN

1 Amend the bill by replacing all after the enacting clause with the following:

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3 1 Purpose and Findings. The purpose of this act is to promote consumer protections related to
4 commercial litigation funding transactions. This act establishes requirements regarding disclosure,
5 funding company and attorney responsibilities and limitations, violations, and other items.

6 2 New Chapter; New Hampshire Third-Party Litigation Funding Transparency Act. Amend
7 RSA by inserting after chapter 294-E the following new chapter:

8

CHAPTER 294-F

9

NEW HAMPSHIRE THIRD-PARTY LITIGATION FUNDING TRANSPARENCY ACT

10 294-F:1 Short Title. This chapter shall be known, and may be cited as, the "Third-Party
11 Litigation Funding Transparency Act."

12 294-F:2 Definitions. In this chapter:

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

20 II. "Commercial litigation financing agreement" means, with respect to any civil action or
21 group of civil actions, a written agreement:

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

24 (b) Which creates a direct or collateralized interest in the proceeds of a civil action or
25 group of civil actions, by settlement, verdict, judgment, or otherwise, and whose interest is based in
26 whole or part on a funding-based obligation to the action or group of actions or the appearing counsel
27 or any contractual co-counsel or the law firm(s) of the counsel or co-counsel executed with:

28 (1) Any attorney representing a party;

29 (2) Any co-counsel in the litigation with a contingent fee interest in the
30 representation of that party; or

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

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1 (c) "Commercial litigation financing agreement" includes any contract, including any
2 option, forward contract, futures contract, short position, swap, or similar contract, or other
3 agreement that is substantially similar to a litigation financing agreement.

4 (d) "Commercial litigation financing agreement" does not include:

5 (1) A consumer legal funding agreement;

6 (2) An agreement by an attorney or law firm to provide legal services on a
7 contingency fee basis to the claimant or to advance the claimant's legal costs in accordance with the
8 American Bar Association's Model Rules of Professional Conduct;

9 (3) A health insurer, medical provider, or assignee that has paid, is obligated to pay,
10 or is owed any sums for a person's health care under the terms of a health insurance plan or
11 agreement;

12 (4) A financial institution providing loans to the claimant or the claimant's attorney
13 or law firm when repayment is not contingent upon the outcome of the legal claim or on the outcome
14 of any matter within a portfolio that includes the legal claim and involves the same attorney or law
15 firm or affiliated attorney or law firm; or

16 (5) A person with a preexisting contractual obligation to indemnify or defend a party
17 to a legal claim.

18 III. "Consumer" means a natural person or estate for a decedent with a legal claim.

19 IV. "Consumer legal funding" means a nonrecourse transaction in which a consumer legal
20 funding company purchases, and a consumer assigns to the company, a contingent right to receive
21 an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the
22 consumer's legal claim.

23 V. "Foreign country or person of concern" means a foreign government or person listed in
24 section 15 CFR 791.4 of the code of federal regulations.

25 VI. "Foreign entity of concern" means an entity that:

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

27 (b) Is owned or controlled by the government, a political subdivision, or a political party
28 of a foreign country of concern;

29 (c) Has a principal place of business in a foreign country of concern; or

30 (d) Is owned, organized, or controlled by, affiliated with, or acting on behalf of an
31 individual or entity that is or has been:

32 (1) On a sanctions list maintained by the Office of Foreign Assets Control, including
33 the following:

34 (A) Specially Designated Nationals and Blocked Persons List ("SDN List");

35 (B) Foreign Sanctions Evaders List;

36 (C) Non-SDN Iran Sanctions Act List;

37 (D) Sectoral Sanctions Identifications List; or

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1 (E) List of Foreign Financial Institutions Subject to Correspondent Account and
2 Payable-Through Account Sanctions; or

3 (2) Designated by the United States Secretary of State as a foreign terrorist
4 organization.

5 VII. "Legal claim" means a civil claim or cause of action.

6 294-F:3 Prohibitions Related to Commercial Litigation Funding. A commercial litigation
7 financier shall not enter into a commercial litigation financing agreement directly or indirectly with
8 a foreign entity of concern or a foreign country or person of concern.

9 294-F:4 Commercial Litigation Financing Agreement Disclosure and Discovery.

10 I. Except as otherwise stipulated or ordered by the court, a claimant or the claimant's
11 attorney shall, without awaiting a discovery request, provide to all parties in a pending civil action
12 any commercial litigation financing agreement at the time a civil action is asserted and any time
13 thereafter that a commercial litigation financing agreement is executed or amended. An insurer
14 that has or may have a duty to defend or indemnify a party to a civil action shall be provided with
15 the commercial litigation financing agreement or any modifications or amendments to the
16 agreement.

17 II. Commercial litigation financing agreements and all participants or parties to such
18 agreements are permissible subjects of discovery in a legal claim.

19 294-F:5 Applicability.

20 I. This chapter shall apply to any commercial litigation financing agreement that is
21 effectuated on or after the effective date of this chapter.

22 II. If any provision of this chapter is, for any reason, declared unconstitutional or invalid, in
23 whole or in part by any court of competent jurisdiction, such portion shall be deemed severable and
24 shall not affect the validity of the remaining portions of this chapter, which shall remain in full force
25 and effect.

26 3 Effective Date. This act shall take effect January 1, 2026.

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AMENDED ANALYSIS

This bill regulates consumer litigation finance agreements and makes violations of the chapter a violation of the New Hampshire consumer protection act.