Rep. Cole, Hills. 26
Rep. Kofalt, Hills. 32
Rep. Ouellet, Coos 3
May 29, 2025
2025-2540h
07/06

Floor Amendment to SB 209-FN

Amend the title of the bill by replacing it with the following:

AN ACT relative to owner's project managers for projects funded by school building aid and relative to reporting requirements for persons or entities financing lawsuits.

Amend the bill by replacing all after section 1 with the following:

2 Purpose and Findings. The purpose of sections 2 and 3 of this act is to require certain disclosures concerning commercial litigation financing agreements and lawyer financing agreements and set forth certain prohibitions regarding commercial litigation financiers.

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

CHAPTER 294-F

NEW HAMPSHIRE THIRD-PARTY LITIGATION FUNDING TRANSPARENCY ACT

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

294-F:2 Definitions. In this chapter:

I. "Commercial litigation financier" means a person in the business of entering into commercial litigation financing agreements or lawyer financing agreements. The term commercial litigation financier does not include a nonprofit organization exempt from federal income tax under 501(c)(3) of the United States Internal Revenue Code or its funders if the nonprofit organization represents the claimant on a pro bono basis, which may include an award of costs or attorney fees to the nonprofit organization or a related attorney.

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

(a) Whereby a third party agrees to provide funds to one of the named parties, and

(b) 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, where such interest is based in whole or part on a funding obligation to the funded party in the action or group of actions.

(c) "Commercial litigation financing agreement" includes 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.

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

(1) A consumer legal funding agreement;

(2) An agreement by an attorney or law firm to provide legal services on a contingency fee basis to the claimant or to advance the claimant's legal costs in accordance with the New Hampshire Rules of Professional Conduct;

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

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

(5) A lawyer financing agreement; or

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

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

IV. "Consumer legal funding agreement" means an agreement memorializing a nonrecourse transaction in which a consumer legal funding company purchases, 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.

V. "Foreign country of concern" means a foreign government or person listed as a "foreign adversary" in 15 C.F.R. 791.4.

VI. "Foreign entity of concern" or "foreign person of concern" means an entity or person that:

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

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

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

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

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

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

(B) Foreign Sanctions Evaders List;

(C) Non-SDN Iran Sanctions Act List;

(D) Sectoral Sanctions Identifications List; or

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

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

VII. “Lawyer financing agreement” means, with respect to any civil action or group of civil actions, a written agreement:

(a) Whereby a third party agrees to provide funding to any counsel or law firm affiliated with the civil action or group of actions; and

(b) Which creates a direct or collateralized interest in the fees, expenses, or other proceeds of a civil action or group of civil actions, by settlement, verdict, judgment or otherwise.

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

294-F:3 Prohibitions Related to Commercial Litigation Funding.

I. A commercial litigation financier shall not enter into a commercial litigation financing agreement with a foreign entity of concern or a foreign country or person of concern, or any entity controlled by any of the foregoing persons or entities.

II. An agreement shall not grant a commercial litigation financier control or approval rights with respect to litigation or settlement decisions.

III. A commercial litigation financier shall not have the right to receive materials designated as confidential pursuant to a protective or confidentiality agreement or order in an action, unless explicitly authorized by the terms of such protective or confidentiality agreement or order.

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

I. Except as otherwise stipulated or ordered by the court, a claimant shall, without awaiting a discovery request, provide to the court, for in camera review, any commercial litigation financing agreement within 30 days after commencement of a legal action or 30 days after execution of a commercial litigation financing agreement, whichever is later.

II. Except as otherwise stipulated by the parties or ordered by the court, counsel shall provide to the court, for in camera review, within 30 days after commencement of a legal action or 30 days after execution of a lawyer financing agreement, whichever is later, a sworn statement that such lawyer financing agreement complies with the prohibitions set forth in RSA 294-F:3 and with the New Hampshire Rules of Professional Conduct. The court shall review, in camera, the lawyer financing agreement to ensure compliance with RSA 294-F:3 and the New Hampshire Rules of Professional Conduct.

III. Except as otherwise stipulated by the parties or ordered by the court, a claimant shall deliver to all other parties, within 30 days after commencement of a legal action or 30 days after execution of a commercial litigation financing agreement, whichever is later, a sworn statement disclosing:

(a) The identity of all contracting parties to the commercial litigation financing agreement, including the name, address and, if a party is a legal entity, the place of formation of such entity;

(b) Whether the agreement complies with RSA 294-F:3;

(c) The existence of any known conflict of interest between a commercial litigation financier, counsel, and the court;

(d) A brief description of the nature of the financial interest; and

(e) Whether any foreign entity of concern or a foreign country or person of concern is providing funding, directly or indirectly, for the commercial litigation financing agreement and, if so, the name, address, and country of incorporation of such foreign entity of concern or a foreign country or person of concern.

IV. Except as otherwise stipulated by the parties or ordered by the court, counsel shall deliver to all other parties, within 30 days after commencement of a legal action or 30 days after execution of a lawyer financing agreement, whichever is later, a sworn statement:

(a) Disclosing the identity of all contracting parties to the lawyer financing agreement, including the name, address and, if a party is a legal entity, the place of formation of such entity;

(b) Disclosing whether the legal claim at issue is a single claim or a part of a portfolio of funded legal claims, without, in the case of a portfolio, identifying any specific legal claims in the portfolio;

(c) Providing a brief description of the nature of the financial interest, including but not limited to the repayment structure and increments, whether the financing is recourse or nonrecourse, and if the time to resolution of the legal claim will affect the contingent interest of the financier;

(d) Affirming that the claimant is fully aware of the lawyer financing agreement and its terms and has been given the opportunity to obtain independent counsel to advise on the use of a lawyer financing agreement in their legal claim; and

(e) Affirming that such lawyer financing agreement complies with the prohibitions set forth in RSA 294-F:3 and with the New Hampshire Rules of Professional Conduct.

V. Information concerning the commercial litigation financing agreement and lawyer financing agreement are not by reason of disclosure admissible in evidence at trial.

294-F:5 Applicability.

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

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

4 Effective Date.

I. Sections 2 and 3 of this act shall take effect January 1, 2026.

II. The remainder of this act shall take effect 60 days after its passage.

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AMENDED ANALYSIS

This bill:

I. Modifies the requirements for the use of owner's project managers for projects funded by school building aid.

II. Regulates commercial litigation finance agreements.