

**Department of Legislative Services**  
Maryland General Assembly  
2025 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 985  
Finance

(Senator A. Washington)

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**Consumer Protection - Third-Party Litigation Financing**

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This bill establishes a regulatory framework for third-party “litigation financing.” The bill specifies entities and activities to which its requirements apply, requires specified disclosures to be provided to consumers before a litigation financing contract may be signed, requires disclosure of a litigation financing contract in certain civil actions, and establishes penalty provisions for noncompliance. The Office of the Attorney General (OAG) is authorized to enforce the bill. A violation of the bill by a litigation financier must render a litigation financing contract void and unenforceable by the litigation financier and any successor-in-interest to the contract. The bill also specifies it is the intent of the General Assembly to promote consumer protection and transparency in third-party litigation financing transactions through the regulation and disclosure requirements established under the bill. The bill applies only prospectively and may not be applied or interpreted to have any effect on (or application to) any litigation financing contract, as defined by the bill, entered into before the bill’s effective date. The bill also contains a severability provision.

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**Fiscal Summary**

**State Effect:** The bill does not materially affect State finances or operations. OAG can likely enforce the bill with existing resources, assuming a minimal number of complaints.

**Local Effect:** The bill does not directly affect local government operations or finances.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Bill Summary:

#### *Definitions*

The bill defines numerous terms related to third-party litigation financing.

“Litigation financier” means a person or group of persons engaged in or formed, created, or established for the purpose of engaging in the business of litigation financing (or any other business or economic activity in which a person or group of persons receives consideration of any kind in exchange for providing litigation financing).

“Litigation financing” means the financing, funding, advancing, or loaning of money to a consumer or a consumer’s legal representative if:

- the repayment of all (or any portion) of the amount financed, funded, advanced, or loaned is (1) contingent on the outcome of a civil action or (2) required only if the consumer prevails in a civil action; or
- the money or funds for the repayment of any amount of financing, funding, advance, or loan is derived or sourced (directly or indirectly) from the proceeds or other consideration realized from any judgment, award, settlement, verdict, or other form of monetary relief the consumer may receive or recover in relation to a civil action.

“Litigation financing contract” means a written contract in which a litigation financier agrees to provide litigation financing to a consumer in conjunction with a civil action as consideration for:

- repayment of the litigation financing;
- the payment of interest, fees, or other consideration to the litigation financier; or
- assigning to the litigation financier a right to receive payment from the value of (1) any proceeds or other consideration realized from any judgment, award, settlement, or verdict or (2) any other form of monetary relief a consumer, a legal representative, or any other person may receive or recover in relation to the civil action.

Notably, “litigation financing contract” does *not* include an agreement, a contract, or an engagement of a legal representative to render legal services to a consumer on a contingency fee basis – including the advancement of legal costs by the legal representative in which the services or costs are provided to (or on behalf of) a consumer by the legal representative who is representing the consumer in a civil action.

## *Applicability*

The bill specifies entities and activities to which its requirements do not apply. Specifically, the bill's requirements do not apply to:

- a nonprofit organization that provides litigation financing, directly or indirectly, for the benefit of the nonprofit organization or one or more of its members without receiving as consideration for the litigation financing (1) the payment of interest, fees, or other consideration or (2) except for in-house counsel of the nonprofit organization, any right to recovery or payment from the amount of any judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil action;
- litigation financing provided by a person engaged in commerce or business activity, but only if the person does not (1) charge or collect any interest, fees, or other consideration; (2) retain or receive any financial interest in the outcome of a civil action; or (3) receive any right to recovery or payment from the amount of any judgment, award, settlement, verdict, or other form of monetary relief obtained in a civil action; or
- a banking institution (as defined in the Financial Institutions Article) that does not receive as consideration for loaning money to a borrower a right to receive payment from the value of any proceeds or other consideration realized from any judgment, award, settlement, verdict, or other form of monetary relief the borrower may receive or recover in relation to a civil action.

## *Required Disclosure in Contract*

Before a litigation financing contract may be signed by a party to the contract, the terms and conditions must be recorded in writing and include each term and condition intended by the parties without omission of any intended term or condition. A litigation financier may not amend the terms or conditions of an executed litigation financing contract without full disclosure to, and prior written consent of, each party to the contract.

## *Required Content of Disclosure*

A litigation financing contract must contain certain disclosures and statements in the appropriate form, as specified by the bill. The required disclosures must constitute the material terms of a litigation financing contract.

A litigation financing contract must make specified disclosures. For example, among other things, the contract must disclose:

- the contact information for the litigation financier;
- that some (or all) of the litigation financing may be taxable;
- a description of the consumer's right of rescission;
- an itemization of charges;
- that if there is no recovery of any money from the civil action, the consumer must owe nothing to the litigation financier; and
- that if there is not enough recovery to satisfy the total amount assigned to the litigation financier, the consumer must owe nothing in excess of the consumer's recovery amount.

The bill specifies the content and form of the required disclosures that must be included in a litigation financing contract.

#### *Disclosure in a Civil Action*

Except as otherwise stipulated or ordered by a court, a party in a civil action must, without waiting for a discovery request, provide to each of the other parties in the civil action and each insurer that has a duty to defend another party in the civil action any litigation financing contract under which a litigation financier has a right to receive compensation that is contingent in any respect on the outcome of the civil action. This disclosure is required regardless of whether a civil action has formally commenced and is also a continuing obligation, as specified.

The admissibility of a litigation financing contract in a civil action must be governed by the Maryland Rules of Evidence. However, a litigation financing contract may not be admissible in a civil action solely on the basis of the bill's disclosure requirement. The existence of a litigation financing contract and each participant or party to a litigation financing contract is a permissible subject of discovery in any civil action for which litigation financing is provided under the contract, regardless of whether a civil action has formally commenced.

#### *Miscellaneous Provisions*

The bill applies to any civil action filed or certified as a class action in which a litigation financier provides litigation financing to a consumer involved in the civil action. A litigation financier must (1) owe a fiduciary duty to each class member and intended beneficiary of a putative or certified class and (2) act in a manner consistent with the litigation financier's fiduciary duty throughout the civil action.

In addition to other disclosures required under the bill, a legal representative of a putative or certified class must disclose to each party, putative or certified class member, and the

court any legal, financial, or other relationship between the legal representative and the litigation financier. The legal representative of the putative or certified class must disclose to each putative or certified class member a true and correct copy of any litigation financing contract upon request.

### *Prohibitions*

The bill establishes numerous prohibitions related to litigation financing. For example, among other prohibitions, a litigation financier may not:

- pay, offer, or accept a commission, referral fee, rebate, or other form of consideration to (or from) any person in exchange for referring a consumer to a litigation financier;
- charge a rate of interest that exceeds the rate of interest allowed under Title 12, Subtitle 1 of the Commercial Law Article (which governs interest and usury);
- advertise false or misleading information regarding the litigation financier's products or services; or
- knowingly enter into an agreement creating a right for anyone other than the named parties, counsel of record, or law firm of record to make or receive any payment that is contingent on the outcome of a civil action.

A person who provides goods or renders a service to a consumer may not (1) have a financial interest in the consumer's litigation financing contract or (2) receive a commission, referral fee, rebate, or other form of consideration from a litigation financier or an agent or affiliate of the litigation financier.

### *Enforcement Provisions*

If a litigation financier charges a rate of interest that exceeds the rate of interest allowed under Title 12, Subtitle 1 of the Commercial Law Article, the litigation financier is subject to the enforcement and penalty provisions contained therein (noted below).

**Current Law:** State law does not generally regulate litigation financing, as defined by the bill.

### *Interest and Usury (Title 12, Subtitle 1 of the Commercial Law Article)*

Loans made under the Interest and Usury Subtitle generally cap interest rates at 24%. Any lender who knowingly and willfully violates the permitted interest charges under Subtitle 1 is guilty of a misdemeanor and on conviction is subject to a fine of up to \$500 and/or imprisonment for up to six months.

**Small Business Effect:** Any small businesses that engage in third-party litigation financing (or receive compensation through such a process) must comply with the regulatory framework established by the bill and, as a result, are meaningfully affected under the bill.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has not been introduced within the last three years.

**Designated Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); Department of Legislative Services

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