

## MEMORANDUM

**DATE:** February 4, 2025  
**TO:** House Industry, Business and Labor Committee  
**FROM:** Corey Krebs, Assistant Commissioner  
**SUBJECT:** Testimony in Support of House Bill No. 1372

Chairman Warrey and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of House Bill No. 1372.

Mr. Chairman and members of the Committee, House Bill 1372 creates a new section of title 13 of the North Dakota Century Code to regulate litigation financing. The decision to regulate an industry and the specific approach to regulate the industry is a public policy decision, thus we typically do not advocate for or against a bill like this, unless we can point to model legislation, or the legislation otherwise clarifies our oversight role where there is ambiguity. This litigation financing bill falls into the category of clarifying ambiguity. There has been confusion on how to identify these products.

Clearly defining this as a financing product is beneficial to the public and the department.

We did work with Rep. Klemin while he was drafting this bill. This bill includes the standard enforcement language that is part of every statute governing other industries regulated by the department under title 6 and title 13. I would like to clarify that while we are in support of a framework to regulate litigation financing, including the standard enforcement language, we are not weighing in on the specific framework proposed. We do not see anything that is problematic within this bill, so the remaining details are a public policy discussion.

Litigation financing is a financing product where a company will provide a consumer who is part of a lawsuit funds today in exchange for a portion of any future winnings or settlement from a legal case. Litigation financing companies typically work with the customer's attorney to evaluate the merits of the case. In this way, they are effectively underwriting the case. The financing company takes an interest in future winnings or settlement, and if the case winnings or settlement do not materialize or are not sufficient, the financing company does not get repaid. In many ways, this financing product resembles an unsecured loan with conditional repayment terms.

This conditional repayment makes this a higher risk, higher return product for these financing companies. It appears there are a number of business models in this space, from sophisticated investment firms funding complicated multimillion dollar settlements to companies financing as little as \$500. Media reports indicate wide ranges of costs and success rates for these types of transactions, with examples of companies with success rates as high as 90% and returns ranging from 15% to 150% of the amount financed. Since this is a new industry with limited historical oversight, it is difficult to say with certainty the range of consumer costs or success rates for companies in this space.

It appears that states have taken several paths to regulate litigation financing. Some states have separate statutes, although no single approach has emerged as a consistent standard. Several states have applied their existing usury or consumer loan requirements to legal financing. Several states prohibit legal financing altogether. Finally, some states have no clear regulatory framework for litigation financing.

There is a fiscal note for this bill. We looked to other states to get an estimate of the number of companies that could seek a license here in North Dakota. We estimated 5 companies resulting in revenue of \$17,000 and expenses of \$9,000 for the biennium. We did not request an FTE related to

this bill, we don't know what the exam processes will look like for this product but we think that it will not be excessive. If regulating these products is more time intensive than we expect, we would need to address the staffing issue next biennium when we have a better understanding of the workload.

Mr. Chairman, thank you for the opportunity to provide this testimony. I would be happy to answer any questions the Committee may have.