



North Dakota Association for Justice
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The.Trial.Lawyers.of.North.Dakota

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Chairman Warrey and members of the House Industry, Business and Labor committee, my name is Jaci Hall and I am the Executive Director of the North Dakota Association for Justice. Today, I am here in opposition of HB1372

Third-party litigation funding (TPLF) is a financial arrangement where a third-party entity (the funder) provides money to a party involved in a lawsuit, usually to cover daily expense – mortgage, car payments, groceries, in exchange for payment once the case has been settled or awarded by a jury. This arrangement helps plaintiffs who may not have the means to see a case through to the end due to the inability to work or provide for their family.

How It Helps an Injured Person Finalizing Their Claim:

1. **Access to Justice:** For many plaintiffs, especially individuals who have suffered significant harm and cannot afford to pay day-to-day expenses after they are injured and unable to work, litigation funding provides an opportunity to pursue justice. It levels the playing field, especially against well-funded defendants (e.g., large corporations or insurance companies) that might otherwise have the resources to delay or outlast a claim.
2. **No Financial Risk for the Plaintiff:** If the case is unsuccessful, the plaintiff typically doesn't owe anything to the funder. This means the injured party can pursue a claim without worrying about being saddled with debt or losing money, even if the lawsuit doesn't end in their favor.
3. **Accelerating Settlement Negotiations:** With the financial backing from litigation funding, a plaintiff might be in a stronger position to negotiate a settlement or wait for trial. They may be less reliant on a quick settlement to resolve immediate financial pressures, potentially leading to better outcomes.

Example of How It Works:

Imagine an individual who has been seriously injured in a car accident caused by a negligent driver. They may have a strong case but lack the money to pay for day-to-day living after they have expended their savings



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and maxed out their credit cards. They are the sole provider for their family and will lose their home, because they are behind on their mortgage. They have not built enough credit to receive a loan for the bank. A third-party funder agrees to cover these costs in exchange for repayment after the case has been settled or a jury verdict has been reached. The injured person can then continue with the case, confident that they won't be financially strained during the process. Once the case closes, the funder receives their agreed-upon amount, and the plaintiff receives the residual.

Third party litigation funding can play a role in cases, but here in North Dakota, they are used infrequently. HB1372 will have a negative impact on the cases where third party litigation can play a role.

First, HB1372 only requires licensed attorneys to be held accountable to report contracts to insurance companies and insurance defense attorneys. However, there are times when a licensed attorney in the state of North Dakota is providing local counsel to out-of-state attorneys. When providing local counsel, the North Dakota attorney may not know the agreements between the injured party and their out-of-state attorney. Line 22 on page 17 says any violation, known or unknown, results in a class C felony?

For example, I signed a contract with a hotel chain to host a conference. Once the contract is signed, I sign additional contracts with vendors to come in and provide information to my attendees. Under the above scenario, the hotel chain would be held responsible for and liable for the decisions made between me and the vendor.

Cases in the state are also settled by out-of-state attorneys, as they are not required to be licensed to settle cases. But will only be a licensed attorney receive the felony charge?

Second, HB1372 includes an apparent 'transparent clause' to the legislation. On line 16, page 11, After the insurance company requesting this legislation (American Property Casualty Insurance Association) receives the contract from the injured party that they are using to make ends meet and prolong the case, they will provide the claimant with the defendant's insurance policy. This information is already provided, so the



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insurance company wants to be able to see how long an injured party can hold out but will not provide their costs to the injured party.

Lastly, HB1372 requires attorneys to be held responsible for agreements between litigation financiers and plaintiffs, they are barred from being compensated for their time to review the contract. If they are going to be responsible, they need to ensure the contract is in the best interest of the plaintiff. However, who will pay for their time?

In conclusion, third-party litigation funding serves a purpose for certain cases. It can provide crucial financial support for an injured person, enabling them to pursue a legitimate claim without the burden of upfront costs, which can help them reach a final settlement or judgment in their case.

However, HB1372 creates undue barriers and consequences for the attorney, plaintiff and the third party litigation funding company. If this committee feels these companies should be licensed, great – but do not allow these insurance companies to determine how, why and when these contracts should be used.

We cannot support this legislation as it is written. We have had numerous conversations with the APCIA, but in the end they determined our concerns were not warranted. We ask you for a Do Not Pass on HB1372.