

2025 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1372

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1372
2/4/2025

A BILL for an Act to create and enact a new chapter to title 13 of the North Dakota Century Code, relating to litigation financing; to provide a penalty; and to provide for application.

10:05 a.m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, Brown, Finley-DeVile, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Member Absent: Representative Christy

Discussion Topics:

- Property investment opportunities
- "TPLF" Third party litigation financing
- Regulation of litigation financing
- Penalties to ND attorneys
- Return on investment
- Funding agreements
- Facilitate transparency
- National security concerns
- Foreign adversary concerns
- Currently no regulation
- Resources to claimant
- Transparency clause

10:05 a.m. Representative Lawrence R. Klemin, District 47, Bismarck ND, introduced, testified and submitted testimony #34141 and #34144.

10:11 a.m. Kelley Brooke, American Property Casualty Insurance Association, testified in favor and submitted testimony #34064.

10:21 a.m. Rhonda Hurwitz, Senior Director, Liability & Counsel, American Property Casualty Insurance Association (APCIA), testified in favor and submitted testimony #33530.

10:37 a.m. Corey J. Krebs, Assistant Commissioner, Department of Financial Institutions, testified in favor and submitted testimony #34016.

10:50 a.m. Andrea Pfenning, Vice President, Government Affairs, Greater North Dakota Chamber (GNDC), testified in favor and submitted testimony #34211.

10:53 a.m. Scott Meske, 701 Strategies LLC, representing the ND Motor Carriers Association, testified in favor.

10:55 a.m. David Schweigert, Attorney, Schweigert, Klemin & McBride, P.C., testified in opposition and submitted testimony #34602.

11:09 a.m. Jaclyn Hall, Executive Director, ND Association for Justice, testified in opposition and submitted testimony #34318.

11:18 a.m. Eric K. Schuller, Alliance for Responsible Consumer Legal Funding, testified in opposition and submitted testimony #34343 and #34596.

Additional Written Testimony:

Cary Silverman, Representing the American Tort Reform Association, submitted testimony #33303.

Harrison G. Hosker, Senior Associate, American Legal Finance Association, submitted testimony in opposition #34035.

11:25 a.m. Chairman Warrey closed the hearing.

Diane Lillis, Committee Clerk

Testimony in Support of H.B. 1372
 Legislation Relating to Litigation Financing
 Cary Silverman
 On Behalf of the American Tort Reform Association
 Before The North Dakota House Industry, Business, and Labor Committee
 February 4, 2025, 10am

Chairman Warrey and members of the Committee, thank you for the opportunity to testify in support of H.B. 1372, legislation that addresses the growing practice of the outside entities funding of litigation in our courts. We would like to thank Representative Klemin and Senator Larson for sponsoring this important legislation.

I am testifying today on behalf of the American Tort Reform Association (ATRA). ATRA is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources with the goal of ensuring fairness, balance, and predictability in civil litigation. I am an attorney with a national law firm, Shook, Hardy & Bacon L.L.P., and serve as counsel to ATRA.

In recent years, we have seen a proliferation of third parties investing money in litigation, viewing the civil justice system not as a way of resolving disputes and providing fair compensation, but purely as a profit-making opportunity. Dedicated litigation finance firms, hedge funds, institutional investors, foreign sovereign wealth funds, and wealthy individuals are investing billions of dollars each year into funding U.S. lawsuits in exchange for a portion of the recovery obtained by a law firm. Commercial litigation funders invest both in individual cases and “portfolio” litigation, dockets of cases.¹ Funders back the law firms behind mass tort, intellectual property, antitrust, and other litigation.² Major litigation funders alone had more than \$15 billion invested in U.S. litigation in 2023.³ TPLF investments in what is referred to as commercial litigation funding are projected to double to about \$30 billion over the next few years.⁴

As experts on litigation finance have explained, TPLF is “reshaping every aspect of the litigation process—which cases get brought, how long they are pursued, when are they settled.”⁵ An outside funder’s presence can turn what is traditionally a negotiation between two opposing parties into a multi-party affair with a “behind the scenes” funder interested solely in maximizing a return on investment. These TPLF arrangements can create serious ethical and other problems.

First, outside funders can interfere in an attorney’s ethical obligation to the client and to exercise independent judgment. Funders may exert control over potential case settlements or other major litigation decisions in place of the law firm’s client. We’ve seen this occur in antitrust litigation, where a major funder, Burford, blocked proposed settlements as too low and sought to take over the litigation.⁶ Another funder, Fortress Investment Group, which

¹ Westfleet Advisors, *supra*, at 6, 8.

² Emily R. Siegel, *Fortress’ Billions Quietly Power America’s Biggest Legal Fights*, Bloomberg Law, Oct. 16, 2024.

³ Westfleet Advisors, *The Westfleet Insider: 2023 Litigation Finance Market Report*, at 3 (2024).

⁴ Swiss Re Institute, *U.S. Litigation Funding and Social Inflation*, at 8 (Dec. 2021).

⁵ Leslie Stahl, *Litigation Funding: A Multibillion-dollar Industry for Investments in Lawsuits with Little Oversight*, CBS’s “60 Minutes,” Dec. 18, 2022 (interview with Prof. Maya Steinitz).

⁶ See Editorial, *The Litigation Finance Snare*, Wall St. J., Mar. 21, 2023; Hannah Albarazi, *When a Litigation Funder is Accused of Taking Over the Case*, Law360, Mar. 15, 2023. A federal magistrate judge in Minnesota observed that Burford’s actions created an “enormous” litigation burden for Sysco and caused “serious practical problems” that proposed to “allow

funds mass tort and IP litigation, is described by insiders as intricately involved in the litigation it funds. As the funder's own managing partner indicated, "We see where funds go. If you do something you're not supposed to do, we're gonna be upset."⁷ Indeed, major funders recognize, and even tout, that their presence "make[s] it harder and more expensive to settle cases."⁸

Second, the money doesn't just fund lawsuits, it may create them. In some instances, the funding supports advertising intended to generate thousands of claims,⁹ making it easier for law firms to pursue speculative lawsuits or assert more questionable claims for a chance at a financial windfall. As a federal judge observed, courts should not become "casinos where people should just go to profit."¹⁰

Third, TPLF can be misused by foreign adversaries to undermine the competitiveness of U.S. businesses,¹¹ attempt to obtain access to trade secrets exchanged in discovery,¹² and even to evade international sanctions.¹³

The full measure of how TPLF is impacting the U.S. legal system is unclear. That is because these investments typically occur in secret and are not disclosed to courts or parties. Accordingly, a critical step to assess and respond to concerns is to provide basic transparency in TPLF arrangements.

There is another form of litigation funding in which outsiders invest in lawsuits in exchange for a portion of the recovery: consumer litigation funding. Here, lenders provide immediate cash to individuals who are plaintiffs in pending litigation, typically personal injury lawsuits. Unlike commercial TPLF, which funds the litigation expenses themselves, consumer lawsuit lending provides money directly to a plaintiff (rather than a law firm) and funds a plaintiff's personal expenses during litigation, rather than fund the litigation itself. Lenders often refer to these arrangements as "pre-settlement advances." They are sometimes advertised as "cash for lawsuits." This form of lawsuit lending is the "legal equivalent of the payday loan."¹⁴

Lenders are repaid out of the judgment or settlement, though, in many (if not most) cases, recovery is a sure thing. Often, the only question is timing – when will the settlement be finalized and when will the check arrive? Experience has shown that these types of loans can come with sky-high interest rates and fees that can leave borrowers with little to no recovery.

a financier with no interest in the litigation beyond maximizing profit on its investment to override decisions made by the party that actually brought suit." *In re Pork Antitrust Litig.*, No. 18-cv-1776 (JRT/JFD), 2024 WL 511890, at *1 (D. Minn. Feb. 9, 2024), *aff'd*, 2024 WL 2819438 (D. Minn. June 3, 2024). The federal judge that affirmed that ruling also noted that an agreement allowing a funder to take over litigation "threatens the public policy favoring the settlement of lawsuits." *In re Pork Antitrust Litig.*, 2024 WL 2819438, at *4 (D. Minn. June 3, 2024).

⁷ Emily R. Siegel, *Mass Tort Marketer Hires Ex-LexShares CEO to Lead Funding Program*, Bloomberg Law, Aug. 20, 2024.

⁸ Jacob Gershman, *Lawsuit Funding, Long Hidden in the Shadows, Faces Calls for More Sunlight*, Wall St. J., Mar. 21, 2018 (quoting Allison Chock, chief investment officer for IMF Bentham's U.S. division (now Omni Bridgeway)).

⁹ Siegel, *Mass Tort Marketer Hires Ex-LexShares CEO to Lead Funding Program*, *supra*.

¹⁰ Michael Shapiro, *Courts Not a Casino, Says Judge Seeking Third-Party Transparency*, Bloomberg Law, Mar. 28, 2024 (quoting Chief Judge Colm Connolly of the U.S. District Court for the District of Delaware).

¹¹ Donald J. Kochan, Editorial, *Keep Foreign Cash Out of U.S. Courts*, Wall St. J., Nov. 24, 2022, at A13.

¹² Emily R. Siegel, *Litigation Finance Trade Group Shrugs Off Disclosure Push*, Bloomberg L., Nov. 15, 2023.

¹³ Emily R. Siegel & John Holland, *Putin's Billionaires Dodge Sanctions by Financing Lawsuits*, Bloomberg Law, Mar. 28, 2024.

¹⁴ Ashby Jones, *Loan & Order: States Object to 'Payday' Lawsuit Lending*, Wall St. J., Apr. 28, 2013.

At payback, a consumer may owe the lender three, five, or even 10 times the advanced amount.¹⁵ Victims have included 9/11 first responders,¹⁶ former professional football players,¹⁷ veterans who brought product liability cases,¹⁸ and ordinary people who have experienced an injury.¹⁹ In North Dakota, these “advances” are not subject to the types of safeguards applicable to payday lending²⁰ or small consumer loans.²¹

Consumer litigation financing industry representatives say that the average lawsuit loan is about \$2,000,²² but the amounts can be far greater. A quick internet search for companies offering these cash advances in North Dakota found separate companies offering up to \$2 million,²³ up to \$1 million,²⁴ and up to \$250,000,²⁵ in as little as 24 hours. The websites do not disclose the repayment obligations for consumers, other than that the lender will be paid out of the consumer’s recovery. The lenders take their share from what is left after the plaintiffs’ lawyer collects his or her contingency fee, which is typically a third or more.

In addition to predatory lending concerns, these agreements can create improper conflicts of interest and improperly deter the reasonable settlement of cases. As one judge observed, plaintiffs “may want to make up the amount they will be forced to repay the funder.”²⁶ If a plaintiff knows that all of his or her settlement will go to his lawyer and to repay the “cash advance,” that plaintiff may reject a reasonable, even generous, settlement. The other parties and the court will not know this is happening.

¹⁵ Shawn Cohen et al., *Inside the Cottage Industry that’s Fleecing NYC Taxpayers*, N.Y. Post, Jan. 2, 2018.

¹⁶ See Leslie Stahl, *Litigation Funding: A Multibillion-dollar Industry for Investments in Lawsuits with Little Oversight*, 60 Minute / CBS News, Dec. 18, 2022 (reporting the case of NYPD officer Donald Sefcik, who took a \$25,000 lawsuit loan while awaiting a \$90,000 victims’ compensation fund payment, and had to pay the lender \$64,800 of his recovery).

¹⁷ Mike Scarcella, *Litigation Funder Thrivent Loses Challenge Over NFL Concussion Payouts*, Reuters, Oct. 27, 2023; Ken Belsen, *Widespread Deceptive Practices May Reduce Payouts in N.F.L. Concussion Settlement*, N.Y. Times, Sept. 19, 2017; Ken Belsen, *N.F.L. Concussion Payouts Have Lenders Circling*, N.Y. Times, May 9, 2016.

¹⁸ Case Management Order No. 61 (Third Party Litigation Funding), *In re: 3M Combat Arms Earplug Prods. Liab. Litig.*, No. 3:19-md-02885 (N.D. Fla. Aug. 29, 2023), at 1.

¹⁹ See, e.g., *Boling v. Prospect Funding Holdings, LLC*, 771 Fed. Appx 562 (6th Cir. 2019) (finding Kentucky law prohibited an arrangement in which a plaintiff who was seriously injured in a gas-can explosion was contractually required to repay \$340,000 of his settlement to a consumer lawsuit lender as a result of taking four advances totaling \$30,000 when the lawsuit settled, an effective annual rate of 79%).

²⁰ N.D. Cent. Code § 13-08-01 et seq. requires “deferred presentment service providers” to obtain a license, limits loans to \$500, prohibits finance charges exceeding 20% of the amount advanced, provides a maximum term of 60 days, among other requirements.

²¹ Lenders that loan consumers amounts of \$35,000 cannot charge them an interest rate that is currently about 10%. See N.D. Dep’t of Financial Institutions, ND Usury Rates for Non-regulated Lenders, <https://www.nd.gov/dfi/sites/www/files/documents/Usury/usury%20chart1.pdf>. This usury rate is 5.5% above the current cost of money as reflected by the average rate of interest payable on U.S. Treasury Bills maturing within six months, but not lower than 7%. N.D. Cent. Code § 47-14-09.

²² See, e.g., *Testimony of Eric Schuller*, President, The Alliance for Responsible Consumer Legal Funding (ARC), Before the Kansas House Committee on Judiciary, H.B. 2694, Feb. 15, 2022.

²³ Tribeca, Get A Lawsuit Loan in North Dakota, <https://tribecalawsuitloans.com/states/north-dakota-lawsuit-loans/>.

²⁴ Mayfair Legal Funding, Get Pre-Settlement Legal Funding in North Dakota within 24 Hours, <https://mayfairlegalfunding.com/lawsuit-loans/north-dakota/>.

²⁵ Uplift Legal Funding, <https://upliftlegalfunding.com/car-accident-loans/north-dakota/>.

²⁶ *Id.* at 2.

H.B. 1372 responds to concerns stemming from both types of third party litigation funding. It both closes a regulatory gap and provides needed transparency. The bill:

- Requires litigation funders to obtain a license from the Commissioner of Financial Institutions and subjects them to regulation.
- Prohibits conduct by litigation funders that raises conflict of interest and other ethical issues, such as influencing the litigation or settlement, offering or providing legal advice to a consumer, accepting or receiving commissions, or referring consumers to a person providing goods or services (such as a medical clinic).
- Requires certain disclosures to consumers in litigation financing contracts, so that they have a better sense of how much what may seem like a small loan will ultimately cost them.
- Prohibits a litigation funder from receiving more than 36% of the amount of the judgment or settlement. That should help avoid situations in which a plaintiff ends up with less than his attorney and the funder.
- Prohibits foreign adversaries from funding litigation.

Perhaps most importantly, the bill requires disclosure of litigation financing contracts. Disclosure of the agreement allows all parties to have an understanding of who has a financial interest in the litigation and is potentially influencing its direction and settlement. It also allows the parties to alert the court if the agreement raises other ethical issues, such as conflicts of interest between funders, lawyers, and clients. The bill treats litigation funding agreements in the same manner as how North Dakota requires disclosure of insurance agreements. Both “enable counsel for both sides to make the same realistic appraisal of the case, so that settlement and litigation strategy are based on knowledge and not speculation.”²⁷

In the consumer litigation finance context, transparency is also key. It will discourage lenders from entering into predatory arrangements by bringing these contracts into the sunlight. This is particularly critical since the bill does not limit interest rates or fees, or set a maximum loan amount or a maximum term during which interest can accumulate, as some states do. Parties need to know that the reason a plaintiff is unable or unwilling to enter what seems to be a generous settlement is because, after the lawyer and lender take their shares, he or she will get nothing. There also may be provisions in the agreement that directly or indirectly give a lender the ability to influence or block a settlement.

In requiring disclosure of third party litigation funding and adopting other safeguards, North Dakota will join other states that have taken similar steps in recent years, such as Indiana, Louisiana, Montana, West Virginia, and Wisconsin.

ATRA supports this legislation and urges the Committee to issue a favorable report. Thank you for your consideration.

²⁷ Fed. R. Civ. P. 26, Notes of Advisory Committee on Rules—1970 Amendment, Subdivision (b)(2)—Insurance Policies.

Chairman Warrey and members of the Industry, Business and Labor Committee,

My name is Rhonda Hurwitz and I am Senior Legal Counsel with the American Property Casualty Insurance Association (APCIA).

I will be testifying remotely after Brooke Kelley and will explain HB 1372 orally by section.

Thank you, Mr. Chairman and committee.

Rhonda A. Hurwitz, Esq.

Senior Director, Liability & Counsel

American Property Casualty Insurance Association

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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.



Testimony of Harrison Hosker

American Legal Funding Association

North Dakota House Committee on Industry, Business and Labor

HB 1372

February 4th, 2025

Good morning, and thank you for allowing me to testify today. My name is Harrison Hosker, and I am with the American Legal Finance Association. I rise to oppose this legislation respectfully. By way of introduction, ALFA is a trade association of the nation's leading legal consumer funding companies that do business throughout the United States. One of ALFA's first actions was establishing Industry standards for the Consumer Legal Funding Industry; the cornerstone of these best practices is transactional transparency and transparent disclosure to consumers. As a result, all ALFA members ascribe to the ALFA Best Practices:

- 1). Prohibit any of the funds being used for the costs of the litigation or attorney fees.
- 2) Prohibit the funding company from being involved in any decisions relating to the
litigation
- 3). Prohibit funding companies from paying any referral fees

4). Prohibit funding companies from using false or misleading advertising and

5) Require attorney acknowledgment of all funding.

The committee must know that ALFA members DO NOT PROVIDE FUNDS TO INDIVIDUALS FOR ANY COSTS, FEES, OR EXPENSES RELATED TO THE PROSECUTION OF LITIGATION. Therefore, a plaintiff can SOLELY use the funds provided by ALFA member companies for their personal life needs like rent, food, or other such expenses. For example, 78% of consumer legal funding is used to avoid foreclosure, nearly 7% for auto payments, and almost 10% for food. ALFA members DO NOT provide funds unless the plaintiff has a bona fide claim and is represented by an attorney. They prohibit any funds from being used to pay attorney fees or any cost related to their case. Consumer legal funding does not fund the lawsuit or pay for class actions.

While ALFA supports much of what is in this legislation, we must oppose it this time due to some concerns with how it is currently written. We would welcome any opportunity to work with this committee to fix our issues to exclude Consumer Litigation Funding.

Thank you for your time today. If you have any questions, I am ready to answer them.



HOUSE BILL NO. 1372

Statement of the American Property Casualty Insurance Association

APCIA is a national trade association representing home, auto, and business insurers. APCIA members account for over 70% of all property and casualty insurance in the United States, generating more than \$13.1 billion in premiums. We respectfully submit the following comments in **SUPPORT of House Bill No. 1372.**

APCIA strongly advocates for regulation and oversight of Third-Party Litigation Financing or (TPLF), a concerning trend in our judicial system.

TPLF is estimated to be a \$500 billion global industry, with the U.S. portion exceeding \$15 billion. This financing model treats lawsuits as investment opportunities, which undermines and exploits our civil justice system. By nature, TPLF increases litigation costs by introducing unknown third parties whose sole interest is to maximize their returns on investment. Additionally, TPLF diverts monetary awards—meant to compensate claimants for their injuries—away from the actual injured parties and toward unrelated financiers.

The economic interests of these financiers rely heavily on prolonged litigation and the discouragement of amicable settlements. This dynamic favors the third-party funders while complicating the pursuit of justice for all involved. It is essential and fair for all parties engaged in litigation to have access to these funding agreements, ensuring both plaintiffs and defendants are equally equipped to seek justice.

TPLF typically claims a large share of claimants' settlements and judgments, often inflating the amounts necessary to account for funders' returns. **This practice deprives claimants of due compensation and complicates the prompt resolution of cases. For instance, plaintiffs may reject reasonable settlement offers due to the obligations they owe to the funders.** One prominent funder has publicly acknowledged that they intentionally complicate case settlements. Increased transparency is crucial for ensuring quicker and more efficient resolutions in these matters.

Moreover, litigation funding can leave consumers with greater debts to lenders than the amounts awarded by the court once a lawsuit concludes. This scenario effectively places unknown third parties in control of the litigation, making it significantly more difficult and costly to settle disputes. By transforming the civil justice system into a profitability-driven enterprise, TPLF discourages amicable resolutions and promotes aggressive, drawn-out litigation of marginal or frivolous claims. This ultimately increases costs for products, services, and potentially insurance.

As if hidden money in civil litigation was not enough of a concern, there have been multiple recent reports of serious national security concerns with this practice, as it is well known that foreign nations are investing in these lawsuits, including in patent litigation.³ This is a significant enough concern that U.S. Senator John Kennedy wrote Attorney General Garland and Chief Justice Roberts in January regarding the need for disclosure of this practice based on the national security implications of foreign sovereign wealth investment in U.S. civil litigation.⁴

All parties and the courts should know if foreign countries are investing in the U.S. civil justice system for profit.

Given these serious concerns, states and courts have started to act. West Virginia, Wisconsin, Indiana, and Montana have enacted laws requiring TPLF disclosure and discovery to the involved parties. Similar legislation is pending in several other states. Importantly, the legislation in West Virginia, Wisconsin, and Montana also mandates the disclosure of the funding agreements themselves. More courts are also instituting similar disclosure requirements through local rules and standing orders.¹

And disclosure is what is required of insurance agreements during litigation, not only in federal cases pursuant to FRCP 26, but in virtually all states, including North Dakota, since the state has adopted a corollary to Rule 26. **This should be no different.** By requiring disclosure and discovery of TPLF to all parties in litigation, balance can be restored to the legal system.

Accordingly, APCIA supports reforming third-party litigation financing in North Dakota and across the country to facilitate transparency in litigation and limit the damage the unregulated and secret world of TPLF has on the fair and efficient administration of justice. As such, we support **HB 1372** to ensure that consumers and our courts are adequately protected.

Thank you for your ongoing commitment to maintaining a fair, efficient, and transparent civil justice system.



Brooke Kelley
Vice President, State Government Relations

¹ Including the U.S. District Courts in Delaware, New Jersey, and the North and Central Districts of California.

³ See e.g., <https://instituteforlegalreform.com/research/ilr-briefly-a-new-threat-the-national-security-risk-of-third-party-litigation-funding/>

⁴ See <https://www.kennedy.senate.gov/public/2023/1/kennedy-urges-roberts-garland-to-take-action-to-protect-national-security-from-foreign-actors-meddling-in-u-s-courts>



North Dakota House of Representatives

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COMMITTEES:

Judiciary, Chairman
Political Subdivisions

TESTIMONY OF REP. LAWRENCE R. KLEMIN HOUSE INDUSTRY BUSINESS AND LABOR COMMITTEE HOUSE BILL NO. 1372 FEBRUARY 4, 2025

Mr. Chairman and Members of the House IBL Committee. I am Lawrence R. Klemin, Representative for District 47 in Bismarck. I am here to testify in support of House Bill 1372, relating to the regulation of litigation financing in North Dakota. I was asked to introduce HB 1372 by the American Property Casualty Insurance Association (APCiA).

Lawsuits are increasingly being viewed as investment vehicles. Third-party litigation financing (TPLF) is a growing trend in our judicial system. TPLF is when an investor helps to finance a lawsuit in which the investor has no personal stake, utilizing outside resources instead of the litigant's own funds. TPLF is typically structured as a non-recourse investment by a funder in a lawsuit. This means that the funding is in exchange for an agreed-upon payment by the litigant to the funder from the proceeds of the legal proceeding, typically a percentage of the settlement amount or judgment in a civil case.

Litigation financiers are unregulated in North Dakota, unlike other lenders. The purpose of HB 1372 is regulate litigation financiers who are not subject to the same limitations and regulatory oversight as for normal consumer loans. HB 1372 was prepared with the review and assistance of the ND Department of Financial Institutions. The provisions of HB 1372 are similar to the provisions of North Dakota Century Code Chapter 13-04.1, relating to money brokers.

I would like to provide you with a brief overview of HB 1372. Representatives from the APCIA and the Department of Financial Institutions are here to testify and will provide you with a more detailed explanation of HB 1372 and will answer questions that you may have.

Litigation financing is defined in Section 1 as the advancing of money to pay for expenses or other sums arising from a civil action if the advancing of money is done by a person other than a party to the civil action, a lawyer directly involved in representing a party to a civil action, or an insurer with a contractual obligation in a pre-existing insurance policy to indemnify or defend a party in the civil action. Regulated lenders,

such as banks, are exempt from the provisions that apply to litigation financiers because they are already regulated either by state or federal requirements.

In this bill, litigation financiers are required to obtain an annual license from the Department of Financial Institutions. They must meet minimum net worth requirements. The license is subject to revocation or suspension for failure to comply with statutory requirements. Litigation financing must be done through the use of written contracts that contain disclosure provisions. A party or a party's attorney must serve a copy of the litigation financing contract with the Complaint in a civil action or within 14 days after the commencement of a civil action if not entered into before the action. An insurer defending a party to the civil action must serve a copy of the insurance policy on the party that commenced the action. Insurance policies are generally discoverable under North Dakota Rules of Civil Procedure

The Department of Financial Institutions is authorized to administer and enforce the new chapter regulating litigation financiers and has investigative and examination authority. Violation of the law may subject a litigation financier to criminal and civil penalties as set out in HB 1372.

The new chapter regulating litigation financing is applicable to any civil action commenced after August 1, 2025.

I would now like to invite the representatives from APCIA to testify and answer questions. I urge a "do pass" recommendation on HB 1372. Thank you.

Rep. Lawrence R. Klemin
District 47, Bismarck



North Dakota House of Representatives

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Representative Lawrence R. Klemin

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COMMITTEES:

Judiciary, Chairman
Political Subdivisions

PROPOSED AMENDMENT TO HOUSE BILL NO. 1372

Page 2, line 6, after the period insert:

- e. "Foreign entity of concern" does not include a foreign organization if the foreign organization:
 - (a) Is a duly registered business and has maintained a status of good standing with the secretary of state for seven years or longer prior to August 1, 2023;
 - (b) Has been approved by the committee on foreign investment in the United States; and
 - (c) Maintains an active national security agreement with the federal government.

Renumber accordingly



**GREATER NORTH DAKOTA CHAMBER
HB 1372**

**House Industry, Business, & Labor Committee
Chair Jonathan Warrey
February 4, 2025**

Mr. Chairman and members of the Committee, my name is Andrea Pfennig, and I am the Vice President of Government Affairs for the Greater North Dakota Chamber. GNDC is North Dakota's largest statewide business advocacy organization, with membership represented by small and large businesses, local chambers, and trade and industry associations across the state. We stand in **support** of House Bill 1372.

Our members support pro-business policies and timely processes that improve the legal and regulatory environment, maintain consistency, promote growth, and lower business costs. Third Party Litigation Financing (TPLF) is a growing practice that raises several concerns.

According to the U.S. Chamber of Commerce, hedge funds, institutional investors, and wealthy individuals are investing significant amounts of money into funding lawsuits in the U.S. These third-party funders provide money to law firms in exchange for a portion of any recovery the firm may obtain in a settlement or court award on a client's behalf. Investors view TPLF as a lucrative opportunity, because they can earn hefty returns that are not tied to economic or market conditions.

However, treating litigation as an investment raises concerns. For example, it may be in a client's interest to settle a case, but a funder whose sole motivation is to pursue the largest possible recovery may reject a reasonable settlement to go for a "nuclear verdict." Without disclosure requirements, there is little to no transparency, making it difficult for judges and parties to know who has an interest in the outcome of the litigation. GNDC has concerns that TPLF may encourage speculative litigation, prolong litigation, and raise costs.

TPLF has the potential to fundamentally alter many aspects of the litigation process—which cases are brought, how long they are pursued, and when they are settled. Further, this can happen behind closed doors. We feel that HB 1372 will provide transparency and improve the legal environment. We hope you will support HB 1372.



North Dakota Association for Justice
PO Box 365
Mandan, ND 58554
The.Trial.Lawyers.of.North.Dakota

Jaclyn Hall, Executive Director
jaclyn@ndaj.org

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.



Testimony Regarding H.B. 1372
Eric Schuller
President
Alliance for Responsible Consumer Legal Funding (ARC)

Mr. Chairman and Members of the committee, my name is Eric Schuller, and I am the President of the Alliance for Responsible Consumer Legal Funding, also known as ARC.

ARC is the largest Trade Association in the country that represents companies that offer Consumer Legal Funding.

Consumer Legal Funding is where a company provides financial assistance to a consumer who has a pending legal claim. Most of the time these cases are car accidents. The funds that we provide the consumer are not used to pay for the legal claim, they are used for household needs, such as mortgage, rent, utilities and putting food on the table.

There is another facet to this space called "Litigation Financing".

Litigation Financing is where funds are provided to an entity to fund the actual litigation. Those funds are used to pay for the attorney, filing fees and deposition cost as an example.

In Consumer Legal Funding the average amount we provide a consumer is \$3,000 to \$5,000. In Litigation Financing the amount of funding typically starts at \$3,000,000.

As drafted, we are in opposition to HB 1372.

However, we feel that the current version of the bill can be clarified as to what the product is that is being regulated and how it is to be regulated.

ARC Highlights of changes to HB 1372:

- Clarifies what "Charges" are
- Clarifies what is "Commercial Litigation Financing"
- Clarifies the 25% guarantee recovery to the consumer to ensure the consumer is treated properly.
- Allows the Consumer Legal Funding Companies to have an honest discussion with the consumers attorney by allowing for privilege communications.
- Assures that Consumer Legal Funding is not a loan in North Dakota
- Clarifies what is covered by any violations



The changes that we are proposing are in line with other legislation that has been enacted across the country regarding the product.

If the changes that we are proposing as an amendment to H.B. 1372 are adopted, we will be supportive of the legislation.

We feel that with these changes it will improve the bill by giving stronger consumer protection to those who use the product in North Dakota.

Attached you will find a red-lined version of the bill with our proposed improvements.

Thank you for your consideration.

Eric Schuller
President

25.0389.03000

Sixty-ninth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1372

Introduced by

Representative Klemin

Senator Larson

- 1 A BILL for an Act to create and enact a new chapter to title 13 of the North Dakota Century
2 Code, relating to litigation financing; to provide a penalty; and to provide for application.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

- 4 **SECTION 1.** A new chapter to title 13 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

- 8 1. "Commissioner" means the commissioner of financial institutions.
9 2. "Consumer" means any individual who resides, is present, or is domiciled in this state
10 or who is or may become a plaintiff, claimant, or complainant in a civil action or in
11 pursuit of any claim or cause of action in this state.

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- 12
13 "Charges" means the amount of money to be paid to the litigation financier by or
on behalf of the consumer, above the funded amount provided by or on behalf
of the litigation financier to a consumer. Charges include all administrative,
origination, underwriting or other fees, including interest, no matter how
denominated.

- 14 "Commercial litigation financing" means covering the costs typically incurred in the
course of civil litigation, including but not limited to filing fees, expert witnesses fees,
transcript fees, court costs, travel expenses and office overhead, but not included funds
intended for use by the party for personal or familial expenses such as food, rent,
mortgage payments, car payments and medical bills.

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115

- 116 3. "Entity" means any domestic or foreign corporation, partnership, limited partnership,
117 limited liability company, trust, fund, plan, or any other business, enterprise,
118 association, or organization of any kind or nature.

- 119 4. "Foreign country or person of concern" includes the following:

- 120 a. A foreign government or person listed in 15 CFR 791.4.

- ~~17~~21 b. A country prohibited from purchasing or otherwise acquiring title to real property
~~18~~22 in this state under section 47-01-09.
- ~~19~~23 5. "Foreign entity of concern" means a partnership, association, corporation,
~~20~~24 organization, or other combination of persons:
- ~~21~~25 a. Organized or incorporated in a foreign country of concern;
- ~~22~~26 b. Owned or controlled by the government, a political subdivision, or a political party
~~23~~27 of a foreign country of concern;
- ~~24~~28 c. That has a principal place of business in a foreign country of concern; or

d. That is owned, organized, or controlled by or affiliated with a foreign organization that has been:

(a) Placed on the federal office of foreign assets control specially designated nationals and blocked persons list (SDN list); or

(b) Designated by the United States secretary of state as a foreign terrorist organization.

6. "Legal representative" means an attorney, group of attorneys, or law firm duly licensed and authorized to practice law and to represent a consumer in a civil action or claim to recover damages in this state.

7. "Litigation financier" means any individual or entity engaged in, formed, created, or established for the purpose of engaging in the business of litigation financing or any other business or economic activity in which the individual or entity receives a percentage of an anticipated recovery in a civil legal action brought by a consumer, lawyer, or law firm asserting legal claims on behalf of a consumer, in exchange for providing litigation financing.

8. "Litigation financing" means the financing, funding, or advancing of money to pay for expenses or any other sums arising from a civil action, claim, or cause of action, if the financing, funding, or advancing of money is provided by any person other than a person that is:

a. A party to the civil action, claim, or cause of action;

b. A legal representative engaged, directly or indirectly, through another legal representative, to represent a party in the civil action, claim, or cause of action; or

c. An entity or insurer with a pre-existing contractual obligation to indemnify or defend a party to the civil action, claim, or cause of action.

9. a. "Litigation financing contract" means a written contract in which a person agrees to provide litigation financing to any person in conjunction with a civil action or in pursuit of any claim or cause of action in this state in consideration for:

(1) The payment of fees or other consideration to the person providing the litigation financing; or

(2) Granting or assigning to the person providing the litigation financing a right to receive payment from the value of any proceeds or other consideration

- 1 realized from any judgment, award, settlement, verdict, or other form of
2 monetary relief any consumer or other person may receive or recover in
3 relation to the civil action, claim, or cause of action.
- 4 b. The term does not include an agreement, contract, or engagement of a legal
5 representative to render legal services to a consumer on a contingency fee basis,
6 including the advancement of legal costs by the legal representative, in which the
7 services or costs are provided to or on behalf of a consumer by the legal
8 representative representing the consumer in the civil action, claim, or cause of
9 action.
- 10 10. "Nationwide multistate licensing system" means the registry developed by the
11 conference of state bank supervisors and the American association of residential
12 mortgage regulators and owned and operated by the state regulatory register or any
13 successor or affiliated entity, for the licensing and registration of persons in financial
14 services industries.
- 15 11. "Regulated lender" means:
- 16 a. A bank, building and loan association, savings and loan association, trust
17 company, credit union, credit association, consumer loan licensee, money broker,
18 deferred presentment service provider, residential mortgage lender licensee,
19 development corporation, bank holding company, or mutual or stock insurance
20 company organized pursuant to state or federal statutory authority and subject to
21 supervision, control, or regulation by:
- 22 (1) An agency of the state; or
23 (2) An agency of the federal government;
- 24 b. A subsidiary of an entity described in subdivision a;
- 25 c. A state agency or a federal agency that is authorized to lend money; and
- 26 d. A corporation or other entity established by congress or the state which is owned,
27 in whole or in part, by the United States or the state and is authorized to lend
28 money.
- 29 License.
- 30 1. A person may not engage in litigation financing in this state unless the litigation
31 financer has received a license from the commissioner.

- 1 2. If the licensed litigation financier is an entity, the entity must be active and in good
- 2 standing with the secretary of state.
- 3 3. The application for a license as a litigation financier must be in writing, under oath, and
- 4 in the form prescribed by the commissioner. The application must include the following
- 5 information:
- 6 a. The legal name of the litigation financier;
- 7 b. The physical street address and mailing address of the litigation financier;
- 8 c. A telephone number or electronic mail address at which the litigation financier
- 9 may be contacted;
- 10 d. The physical street address and mailing address of the licensed financier's
- 11 licensed office and the name of the registered agent at the licensed office who is
- 12 authorized to accept service of process on behalf of the licensed financier; and
- 13 e. Any other information the commissioner considers necessary.
- 14 4. A litigation financier subject to licensure shall file an amended application within twenty
- 15 business days whenever the information contained in the most recently filed
- 16 application changes, becomes inaccurate, or incomplete in any respect.
- 17 5. The commissioner may prescribe forms to carry out this chapter, including the use of
- 18 the nationwide multistate system.
- 19 6. At the time of making an application, the applicant shall include payment of four
- 20 hundred dollars, which is not subject to refund, as a fee for investigating the
- 21 application, and four hundred dollars for the annual license fee. Fees must be
- 22 deposited in the financial institution's regulatory fund.
- 23 7. All documents and information filed with the commissioner are public records.
- 24 8. The commissioner's duty to file documents under this section is ministerial. The
- 25 commissioner's filing or refusing to file a document does not create a presumption
- 26 that:
- 27 a. The document does or does not conform to the requirements of this chapter; or
- 28 b. The information contained in the document is correct or incorrect.
- 29 9. Additional fees may be assessed to cover costs associated with the use of the
- 30 nationwide multistate licensing system.

Surety bond required.

1. Each licensee shall maintain a surety bond in an amount not less than fifty thousand dollars. The surety bond must be in a form prescribed by the commissioner.
2. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.
3. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

Minimum net worth required.

1. A minimum net worth must be maintained continuously by every licensee in accordance with this section.
2. Minimum net worth must be maintained in the amount of twenty-five thousand dollars.
3. If the net worth of a licensee falls below the minimum net worth set forth in subsection 1, the licensee shall provide a plan, subject to the approval of the commissioner, to increase the licensee's net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner which states the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license.

Expiration of licensure - Renewal.

1. Licensure under this chapter expires December thirty-first of each year.
2. Licensure may be renewed for the ensuing twelve-month period upon application and the payment to the commissioner of the annual license fee, which is not subject to refund, before December first of each year.
3. The form and content of renewal applications must be determined by the department of financial institutions and a renewal application may be denied on the same grounds as would justify denial of an initial application.
4. If a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of the license.
5. The commissioner may deny an application to renew a license if the licensee no longer meets the criteria for licensure or otherwise fails to comply with this chapter.

1 **Response to department requests.**

2 An applicant, licensee, or other person subject to this chapter shall comply with requests for
3 information, documents, or other requests from the department of financial institutions within the
4 time specified in the request, which must be a minimum of ten days, or, if no time is specified,
5 within thirty days of the request by the department of financial institutions. If the request for
6 information is in regard to a new application or renewal of an existing application and is not
7 received within the time specified in the request, the department may deny the application.

8 **Revocation of license - Suspension of license - Surrender of license.**

- 9 1. The commissioner may issue upon any licensee an order suspending or revoking a
10 licensee's license if the commissioner finds:
- 11 a. The licensee has failed to pay the annual license fee under this chapter or any
12 examination fee imposed by the commissioner under the authority of this chapter.
- 13 b. The licensee, either knowingly or without the exercise of due care to prevent the
14 same, has violated any provision of this chapter or any rule or order lawfully
15 made under the authority of this chapter.
- 16 c. Any fact or condition existing at the time of the original application for the license
17 which clearly would have warranted the department of financial institutions in
18 refusing originally to issue the license.
- 19 d. The licensee has failed to maintain the required bond.
- 20 e. The licensee has failed to maintain registration with the secretary of state if so
21 required.
- 22 2. The order must contain a notice of opportunity for hearing under chapter 28-32.
- 23 3. If no hearing is requested within twenty days of the date the order is served upon the
24 licensee, the order is final. If a hearing is held and the commissioner finds that the
25 record so warrants, the commissioner may enter a final order. The final order is final
26 suspending or revoking the license.
- 27 4. If the commissioner finds that probable cause for revocation of any license exists and
28 that enforcement of the chapter requires immediate suspension of the license pending
29 investigation, the commissioner may enter an order suspending the license for a
30 period not exceeding the time required to serve upon the licensee written notice plus
31 sixty days, pending the holding of a hearing as prescribed in this chapter.

1 5. Any licensee may surrender the licensee's license by providing the department of
2 financial institutions with written notice of its surrender, but the surrender does not
3 affect the licensee's civil or criminal liability for acts committed before the surrender of
4 the license.

5 **Suspension and removal of money broker officers and employees.**

6 1. The commissioner of financial institutions may issue upon a current or former litigation
7 financing officer or employee and upon the licensee involved an order stating:

8 a. That the current or former officer or employee is engaging or has engaged in any
9 of the following conduct:

10 (1) Violating a law, rule, order, or written agreement with the commissioner.

11 (2) Engaging in harassment or abuse, the making of false or misleading
12 representations, or engaging in unfair practices involving litigation financing
13 activity.

14 (3) Performing an act of commission or omission or practice that is a breach of
15 trust or a breach of fiduciary duty.

16 b. The term of the suspension or removal from employment and participation within
17 the conduct or the affairs of a financial corporation, financial institution, credit
18 union, or any other entity licensed by the department of financial institutions.

19 2. The order must contain a notice of opportunity for hearing under chapter 28-32.

20 3. If a hearing is not requested within twenty days of the date the order is served, the
21 order is final. If a hearing is held and the commissioner finds that the record so
22 warrants, the commissioner may enter a final order.

23 4. A contested or default suspension or removal order is effective immediately upon
24 issuance on the current or former officer or employee and upon the licensee. A
25 consent order is effective as agreed. Any current or former officer or employee
26 suspended or removed from employment and participation within the conduct or the
27 affairs of a licensee under this section is not eligible, while under suspension or
28 removal, to be employed or otherwise participate in the affairs of any financial
29 corporation, financial institution, credit union, or any other entity licensed by the
30 department of financial institutions.

1 5. When any current or former officer or employee, or other person participating in the
2 conduct of the affairs of a licensee is charged with a felony in state or federal court
3 which involves dishonesty or breach of trust, the commissioner may immediately
4 suspend the individual from office or prohibit the individual from further participation in
5 the affairs of the licensee, or both. The order is effective immediately upon issuance of
6 the order on the licensee and the individual charged, and remains in effect until the
7 criminal charge is finally disposed of or until modified by the commissioner. If a
8 judgment of conviction, federal pretrial diversion, conviction or agreement to plea to
9 lesser charges, or similar state order or judgment is entered, the commissioner may
10 order the suspension or prohibition be made permanent. A finding of not guilty or other
11 disposition of the charge does not preclude the commissioner from pursuing
12 administrative or civil remedies.

13 **Litigation financing protections.**

- 14 1. A litigation financier may not:
- 15 a. Accept any commissions, referral fees, rebates, or other forms of consideration
16 from any person rendering any services to the consumer;
- 17 b. Receive or recover any payment that exceeds thirty-six percent of the amount of
18 any judgment, award, settlement, verdict, or other form of monetary relief
19 obtained in the civil action, claim, or cause of action that is the subject of the
20 litigation contract;
- 21 c. Advertise false or misleading information regarding its products or services;
- 22 d. Refer or require any consumer to hire or engage any person providing any goods
23 or rendering any services to the consumer;
- 24 e. Fail to promptly deliver a fully completed and signed litigation financing contract
25 to the consumer and the consumer's legal representative;
- 26 f. Attempt to secure a remedy or obtain a waiver of any remedy, including
27 compensatory, statutory, or exemplary damages, which the consumer may or
28 may not be entitled to pursue or recover otherwise;
- 29 g. Offer or provide legal advice to the consumer;

(1) h.

(2) Assign a contract in whole or in part to a third party. Provided,

however, if the company retains responsibility for collecting payment.

administering, and otherwise enforcing the consumer litigation funding

contract, the prohibition in this subdivision (10) shall not apply to an

assignment:

(A) to a wholly owned subsidiary of the company;

(B) to an affiliate of the company that is under common control with

(C) granting a security interest under Article 9 of the Uniform

Commercial Code or as otherwise permitted by law.

the company; or

Assign a litigation financing contract in whole or in part;

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1 i. Report a consumer to a credit reporting agency if insufficient funds remain to
2 repay the litigation financier in full from the proceeds received from any judgment,
3 award, settlement, verdict, or other form of monetary relief obtained in the civil
4 action, claim, or cause of action that is the subject of the litigation financing
5 contract; and

6 j. Demand, request, receive, or exercise any right to influence, affect, or otherwise
7 make any decision in the handling, conduct, administration, litigation, settlement,
8 or resolution of any civil action, claim, or cause of action in which the litigation
9 financier has provided litigation financing. All rights remain solely with the
10 consumer and the consumer's legal representative.

11 k. Knowingly enter an agreement creating a right for anyone, other than the named
12 parties, counsel of record, or law firm of record, to receive or make any payment
13 that is contingent on the outcome of a claim, or cause of action, the terms of
14 which are to be satisfied by funds directly sourced, in whole or in part, from a
15 foreign entity of concern.

16 l. A litigation financier may not enter a commercial litigation financing contract
17 directly or indirectly with a foreign entity of concern or a foreign country or person
18 of concern.

Commented [ES2]: This term needs to be defined.

19 2. A legal representative who renders any services to the consumer may not have a
20 financial interest in litigation financing and may not receive any commissions, referral
21 fees, rebates, or other forms of consideration from any litigation financier or the
22 litigation financier's employees, owners, or affiliates.

23 **Litigation financing contract - Disclosures.**

24 1. The terms and conditions of a litigation financing contract must be set forth in a fully
25 completed written contract with no terms or conditions omitted.

26 2. The litigation financing contract must identify who is responsible for paying the
27 litigation financier, the source the funds, and when the funds are to be paid to the
28 litigation financier.

29 3. The litigation financing contract must state the amount of funding to be provided to the
30 consumer and the future amounts owed to the litigation financier or the method of
31 calculating the amounts owed to the litigation financier.

- 1 4. The litigation financing contract must reflect all costs and fees and must show the
2 maximum amount a litigation financier may own of the consumer's recovery.
3 5. On execution of a litigation financing contract, a litigation financier may not amend the
4 terms or conditions of the litigation financing contract without full disclosure to and the
5 prior written consent of all parties to the litigation financing contract.
6 6. A litigation financing contract must set forth the name, physical street address, and
7 mailing address of the litigation financier in the litigation financing contract.
8 7. A litigation financing contract must contain the following disclosures that constitute
9 material terms and conditions of the litigation financing contract and must be typed in
10 at least fourteen-point boldface type and be placed clearly and conspicuously
11 immediately above the consumer's signature line in the litigation financing contract:
12 IMPORTANT DISCLOSURES -- PLEASE READ CAREFULLY
13 1. Right to Cancellation: You may cancel this litigation financing contract without
14 penalty or further obligation within five (5) business days from the date you sign
15 this contract or the date you receive financing from the litigation financier,
16 whichever date is later. You may cancel by sending a notice of cancellation to the
17 litigation financier and returning to the litigation financier any funds received from
18 the litigation financier at the litigation financier's address set forth in this contract.
19 1. 2. The Upon written request from the by the consumer and/or consumer's attorney, the litigation
20 financier shall reduce Charges to be a maximum of twenty-five percent (25%) of the gross proceeds
21 from the legal claim.
22 (a) Such written request must include an attestation as to the final amount of the gross
23 proceeds from the legal claim.
24 maximum amount the litigation financier may receive or recover from any
25 contingent payment may not exceed twenty-five percent (25%) of the amount of
26 any judgment, award, settlement, verdict, or other form of monetary relief
27 obtained in the civil action, claim, or cause of action that is the subject of this
28 litigation contract.
29 3. The litigation financier agrees that it has no right to, and will not demand, request,
30 receive, or exercise any right to, influence, affect, or otherwise make any decision
31 in the handling, conduct, administration, litigation, settlement, or resolution of
32 your civil action, claim, or cause of action. All of these rights remain solely with
33 you and your legal representative.
34 4. If there is no recovery of any money from your civil action, claim, or cause of

Sixty-ninth
Legislative Assembly

~~3025~~ 3426 action, or if there is not enough money to satisfy in full the portion assigned to the

litigation financier, you will not owe anything to the litigation financier.

5. You are entitled to a fully completed contract with no terms or conditions omitted prior to signing. Before signing this contract, you should read the contract completely and consult an attorney.

8. If the consumer is represented by a legal representative in the civil action, claim, or cause of action that is the subject of the litigation financing contract, the consumer must provide the litigation funding contract to the consumer's legal representative. Upon receipt, the legal representative shall acknowledge in the contract that the legal representative and the legal representative's employer and employees have not received or paid a referral fee or any other consideration from or to the litigation financier and have no obligation to do so in the future.

Litigation financing contracts - Service.

1. If a party or party's attorney initiates a civil action and is a party to a litigation financing agreement, the party or party's attorney shall serve a copy of the litigation financing contract with the complaint.

2. If a party or party's attorney is served with a litigating financing contract, the person shall serve a copy of any insurance policy relevant to the civil action to the other party within fourteen days.

3. If either party in a civil action enters a litigation financing agreement after the commencement of the civil action, the party shall serve a copy of the agreement on the other party within fourteen days.

Exemptions.

This chapter does not apply to the following:

1. A nonprofit entity that provides litigation financing, directly or indirectly, for the benefit of the nonprofit or one or more of its members without receiving, in consideration for the litigation financing:

a. The payment of interest, fees, or other consideration; or

b. Except for in-house counsel of the nonprofit, any right to recovery or payment from the amount of a judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil action, claim, or cause of action;

2. A regulated lender that does not receive, in consideration for loaning money to any person, a right to receive payment from the value of any proceeds or other

- 1 consideration realized from a judgment, award, settlement, verdict, or other form of
2 monetary relief a person may receive or recover in relation to a civil action, claim, or
3 cause of action.

Effect of Communication on Privileges

- 4 Communications between a consumer's attorney and a litigation financier
to allow the consumer litigation financier to ascertain that status of a legal
claim or a legal claim's expected value shall not be discoverable by a
person against whom the legal claim is asserted or filed.

Not subject to loan statute

- 6 A litigation financing transaction that complies with this Article is not a loan
and is not subject to any provision of law governing loans or investment
contracts. To the extent that this Article conflicts with any other law, this
Article supersedes that law for purposes of regulating consumer legal
funding transactions in this State.

7 _____

3

Class actions.

- 59 1. This chapter applies to any civil action filed or certified as a class action in which
610 litigation financing is provided.
711 2. In addition to the disclosure requirements set forth in this chapter, the legal
812 representative of the putative class shall disclose to all putative class members, any
913 relationship between the legal representative and the litigation financier.
1014 3. A class member is entitled to receive from the class counsel a true and correct copy of
1115 the litigation financing contract on request.

Regulatory oversight - Rulemaking - Records.

- 1317 1. The department of financial institutions shall administer and enforce this chapter. The
1418 department may adopt rules reasonably necessary to carry out this chapter, in
1519 accordance with chapter 28-32. Any hearing held and any orders issued under this
1620 chapter must be in accordance with chapter 28-32. In addition to those powers set
1721 forth in chapter 28-32, the department has additional powers as set forth in this
18 chapter.

- 1922 2 Insofar as consistent with the provisions of law, the department of financial institutions
2023 may:

- 2124 a. Determine the qualifications of all applicants based on financial responsibility.

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Sixty-ninth
Legislative Assembly

2225 financial condition, business experience, character, and general fitness which
2326 must reasonably warrant the belief that the applicant's business will be conducted
2427 lawfully and fairly. In determining whether this qualification is met, and for the
2528 purpose of investigating compliance with the chapter, the commissioner may
2629 review and consider the relevant business records and capital adequacy of the
2730 applicant and the competence, experience, integrity, and financial ability of an
2831 individual who is a member, partner, director, officer, or twenty-five percent or
2932 more shareholder of the applicant.
3033 b. Establish codes of ethical conduct for licensees.

- 1 3 Every licensee licensed under this chapter shall keep a record of all sums collected by
2 the licensee and of litigation financing completed as a result of the licensee's efforts
3 for six years from the date of last entry. The records of a licensee may be maintained
4 electronically if the records can be reproduced upon request by the department of
5 financial institutions and within the required statutory time period provided in this
6 section. When a licensee ceases operations for any reason, the licensee shall inform
7 the department of the location of the records. In addition, the licensee shall provide the
8 name of the individual responsible for maintenance of the records.
- 9 4 When it appears to the department of financial institutions either upon complaint or
10 otherwise, that any person has engaged in, is engaging in, or is about to engage in
11 any act or practice or transaction prohibited by this chapter, or by any order of the
12 department issued under this chapter or which is declared to be illegal in this chapter,
13 the department may:
- 14 a. Issue any order that is effective upon issuance, including cease and desist, stop,
15 and suspension orders, which the department deems necessary or appropriate in
16 the public interest or for the protection of the public; provided, however, that any
17 person aggrieved by an order issued under this subsection may request a
18 hearing before the department if the request is made within ten days after receipt
19 of the order. The hearing and any appeal of the hearing must be held in
20 accordance with chapter 28-32.
- 21 b. Apply to the district court of Burleigh County, for an injunction restraining the
22 person and the agents, employees, partners, officers, and directors of the person
23 from continuing the act, practice, or transaction and for the other relief the facts
24 may warrant. In any proceeding for an injunction, the department may apply for
25 and on due showing be entitled to have issued the court's subpoena requiring the
26 appearance of any defendants and their agents, employees, partners, officers, or
27 directors, and the production of the documents, books, and records as may
28 appear necessary for the hearing upon the petition for an injunction. Upon proof
29 of any of the offenses described in this section, the court may grant the injunction
30 as the facts may warrant. The court may not require the department to post a
31 bond.

34 5. The department of financial institutions shall not have the authority to set limits on the charges a litigation financier may charge.

1 **Investigations, subpoenas, and examination authority.**

2 In addition to any authority allowed under this chapter, the commissioner may conduct
3 investigations and examinations as follows:

4 1. The department of financial institutions:

- 5 a. May make the public or private investigation or examination within or outside this
6 state as it deems necessary to determine whether any person has violated or is
7 about to violate any provision of this chapter or any rule or order, or to aid in the
8 enforcement of this chapter or in the prescribing of rules and forms under this
9 chapter. The licensee shall pay an investigation or examination fee and must be
10 charged by the department of financial institutions at an hourly rate to be set by
11 the commissioner, sufficient to cover all reasonable expenses of the department
12 associated with the visitation provided for by this section. Fees must be
13 deposited in the financial institutions regulatory fund.
- 14 b. May require or permit any person to file a statement in writing, under oath, or
15 otherwise as the department determines, as to all the facts and circumstances
16 concerning the matter to be investigated or examined.
- 17 c. May publish information concerning any violation of this chapter or any rule or
18 order under the chapter.

19 2. For the purpose of any investigation, examination, or proceeding under this chapter,
20 the department of financial institutions may administer oaths and affirmations,
21 subpoena witnesses, compel the attendance of witnesses, take evidence, and require
22 the production of any books, papers, correspondence, memoranda, agreements, or
23 other documents or records the department deems relevant or material to the inquiry.

24 3. In the case of a failure or refusal to obey a subpoena issued to any person, the district
25 court, upon application by the department of financial institutions, may issue to the
26 person an order requiring the person to appear before the department, to produce
27 documentary evidence if so ordered, or to give evidence touching the matter in
28 question under investigation or examination. Failure to obey the order of the court may
29 be punished by the court as a contempt of court.

30 4. An individual is not excused from attending and testifying or from producing any
31 document or record before the department of financial institutions, or in obedience to

1 the subpoena of the department, or in any proceeding instituted by the department, on
2 the grounds that the testimony or evidence, documentary or otherwise, required of the
3 individual may tend to incriminate the individual or subject the individual to a penalty
4 forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture
5 for or on account of any transaction, matter, or thing concerning which the individual is
6 compelled, after claiming the privilege against self-incrimination, to testify or produce
7 evidence, documentary or otherwise, except that the individual testifying is not exempt
8 from prosecution and punishment for perjury or contempt committed in testifying.

9 5. For purposes of initial licensing, license renewal, license suspension, license
10 conditioning, license revocation or termination, or general or specific inquiry or
11 investigation to determine compliance with this chapter, the commissioner may
12 access, receive, and use any books, accounts, records, files, documents, information,
13 or evidence, including:

- 14 a. Criminal, civil, and administrative history information, including nonconviction
15 data;
16 b. Personal history and experience information, including independent credit reports
17 obtained from a consumer reporting agency described under the Fair Credit
18 Reporting Act [15 U.S.C. 1681a]; and
19 c. Any other documents, information, or evidence the commissioner deems relevant
20 to the inquiry or investigation regardless of the location, possession, control, or
21 custody of the documents, information, or evidence.

22 6. For purposes of investigating violations or complaints arising under this chapter, or for
23 purposes of examination, the commissioner may review, investigate, or examine any
24 licensee or person subject to this chapter, as often as necessary in order to carry out
25 the purposes of this chapter.

26 7. Each licensee or person subject to this chapter shall make available to the
27 commissioner upon request the books and records relating to the operations of the
28 licensee or person subject to this chapter. The commissioner shall have access to the
29 books and records and interview the officers, principals, mortgage loan originators,
30 employees, independent contractors, agents, and customers of the licensee or person
31 subject to this chapter concerning their business.

- 1 8. Each licensee or person subject to this chapter shall make or compile reports or
2 prepare other information as directed by the commissioner to carry out the purposes of
3 this section, including:
- 4 a. Accounting compilations;
5 b. Information lists and data concerning litigation financing transactions in a format
6 prescribed by the commissioner; or
7 c. Any other information deemed necessary to carry out the purposes of this
8 section.
- 9 9. In making any investigation or examination authorized by this chapter, the
10 commissioner may control access to any documents and records of the licensee or
11 person under investigation or examination. The commissioner may take possession of
12 the documents and records or place a person in exclusive charge of the documents
13 and records in the place in which the records are usually kept. During the period of
14 control, an individual may not remove or attempt to remove any of the documents and
15 records except pursuant to a court order or with the consent of the commissioner.
16 Unless the commissioner has reasonable grounds to believe the documents or
17 records of the licensee have been, or are at risk of being altered or destroyed for
18 purposes of concealing a violation of this chapter, the licensee or owner of the
19 documents and records may have access to the documents or records as necessary
20 to conduct its ordinary business affairs.
- 21 10. To carry out the purposes of this section, the commissioner may:
- 22 a. Retain accountants or other professionals and specialists as examiners, auditors,
23 or investigators to conduct or assist in the conduct of examinations or
24 investigations;
- 25 b. Enter agreements or relationships with other government officials or regulatory
26 associations to improve efficiencies and reduce regulatory burden by sharing
27 resources, standardized or uniform methods or procedures, and documents,
28 records, information, or evidence obtained under this section;
- 29 c. Use, hire, contract, or employ publicly or privately available analytical systems,
30 methods, or software to examine or investigate the licensee, individual, or person
31 subject to this chapter;

- 1 d. Accept and rely on examination or investigation reports made by other
2 government officials, within or without this state; and
3 e. Accept audit reports made by an independent certified public accountant for the
4 licensee or person subject to this chapter in the course of that part of the
5 examination covering the same general subject matter as the audit and may
6 incorporate the audit report in the report of the examination, report of
7 investigation, or other writing of the commissioner.
- 8 11. The authority of this section remains in effect, whether a licensee or person subject to
9 this chapter acts or claims to act under any licensing or registration law of this state or
10 claims to act without the authority.
- 11 12. A licensee or person subject to investigation or examination under this section may not
12 knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records,
13 computer records, or other information.
- 14 **Act violation - Unenforceable contract.**
- ~~15~~ Any willful violation of this chapter by the litigation financier renders the litigation financing contract
~~16~~ unenforceable by the litigation financier or any successor-in-interest to the litigation financing
~~17~~ contract.
- ~~18~~ **Penalty.**
- ~~19~~ 1. Any person willfully violating any provision of this chapter or any rule or order of the
~~20~~ department of financial institutions made under this chapter or who engages in any
~~21~~ act, practice, or transaction declared by any provision of this chapter to be unlawful is
~~22~~ guilty of a class C felony.
- ~~23~~ 2. The commissioner may impose a civil money penalty not to exceed one hundred
~~24~~ thousand dollars for each occurrence and one thousand dollars per day for each day
~~25~~ the violation continues after issuance of the order against any person who violates a
~~26~~ law, rule, written agreement, or order under this chapter.
- ~~27~~ 3. An interested party may appeal the assessment of a civil money penalty under the
~~28~~ provisions of chapter 28-32 by filing a written notice of appeal within twenty days after
~~29~~ service of the assessment of civil money penalties.
- ~~30~~ 4. A civil money penalty collected under this section must be paid to the department of
~~31~~ financial institutions and deposited in the financial institution's regulatory fund.

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Confidentiality.

1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal law, chapter 44-04, or section 6-01-07.1, regarding the privacy or confidentiality of any information or material provided to the nationwide multistate licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the nationwide multistate licensing system and registry. Any information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law, chapter 44-04, or section 6-01-07.1.
2. For these purposes, the commissioner may enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies.
3. Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:
 - a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
 - b. Subpoena or discovery, or admission into evidence, in any administrative process, unless with respect to any privilege held by the nationwide multistate licensing system and registry with respect to the information or material, the person to whom the information or material pertains waives, in whole or in part, in that privilege.
4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material subject to a privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court.

- 1 The court ordering the disclosure shall issue a protective order to protect the
2 confidential nature of the records.
- 3 5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of
4 confidential supervisory information or any information or material described in
5 subsection 1 which is inconsistent with subsection 1, is superseded by the
6 requirements of this section.
- 7 6. Except for provisions of chapter 6-08.1 that are inconsistent with this chapter, chapter
8 6-08.1 applies to all money brokers licensed under this chapter.
- 9 **SECTION 2. APPLICATION.** This Act applies to any civil action commenced after the
10 effective date of this Act.

Customer Testimonial

Why did you use Consumer Legal Funding?

I used to work as a lineman. I climbed telephone poles for a living. After a crippling car accident in which I was rear-ended, I could no longer do the work and I lost my income. Soon, I had piles of bills and threats of eviction.

How did Consumer Legal Funding help?

One call to a legal funding company and two years later, my legal case was finally settled and I was able to pay off my rent, utility and medical bills.

What would have happened if Consumer Legal Funding was not available to you?

The accident changed everything in my life but consumer legal funding became a shining beacon of hope. That money was a lifesaver.

I am now back on my feet and working as a landscaper. I never thought I would go from climbing telephone poles to cutting grass. I am very grateful.

Ron Iocca

Old Bridge, NJ



Visit Us Online

Our website is your source for useful information: arclawfunding.org

ARC represents a diverse coalition of providers, consumers, academics, policy makers and other industry supporters. Together, we advocate at the state and federal levels to recommend regulations that preserve consumer choice.



712 H Street NE Suite 1007, Washington, DC, 20002
(571) 969-2720 • info@arclawfunding.org

#34596



What is Consumer Legal Funding?



What is Consumer Legal Funding?

Consumer legal funding helps people who have been in an accident, suffered a loss of income, and have a pending legal claim. People already represented by an attorney can sell a small amount of a potential settlement for money now — usually to access about \$2,000 immediately. Families trying to regain financial stability can meet their obligations while pursuing the fair value of their claim.

With 62% of Americans lacking adequate savings to cover a \$500 car repair or \$1,000 emergency room visit, an accident can be devastating to all types of working families across the country (Bankrate.com, January 2015). Legal funding helps families meet obligations, avoid public assistance, and recover.

What are the benefits over a loan?

Because legal funding best resembles an asset purchase, it operates differently than other products — like loans.

NO

Monthly payments
Risk to consumer's credit
Collections
Debt created

If the person loses the case, then he or she keeps the funds with NO strings attached. The provider absorbs that loss and assumes all the risk.

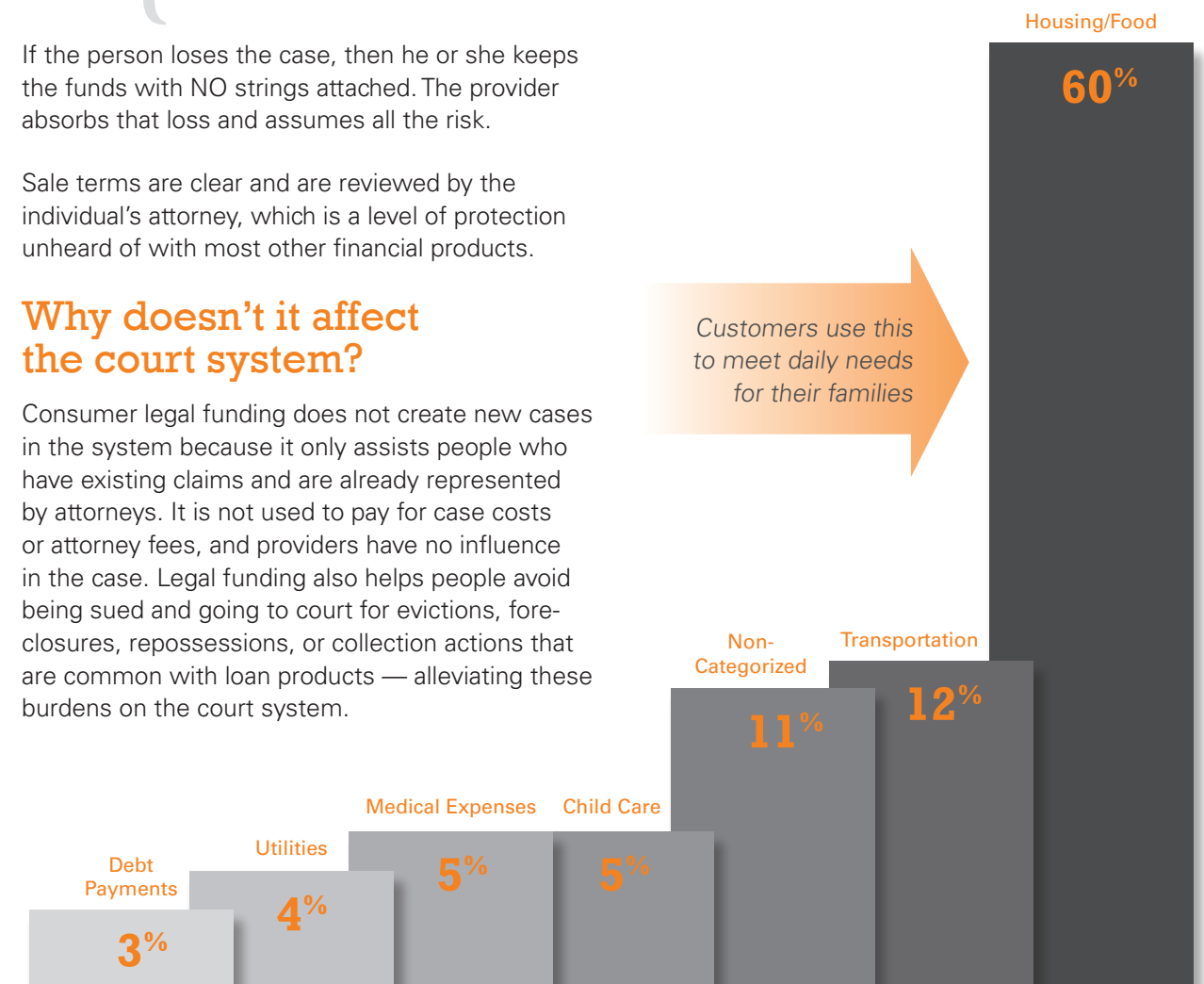
Sale terms are clear and are reviewed by the individual's attorney, which is a level of protection unheard of with most other financial products.

Why doesn't it affect the court system?

Consumer legal funding does not create new cases in the system because it only assists people who have existing claims and are already represented by attorneys. It is not used to pay for case costs or attorney fees, and providers have no influence in the case. Legal funding also helps people avoid being sued and going to court for evictions, foreclosures, repossessions, or collection actions that are common with loan products — alleviating these burdens on the court system.

Why is the insurance industry so against it?

Ordinary Americans can't take on a trillion dollar industry of professional defendants. As a result, people are often forced to settle for lowball offers. You can get a quick settlement or a fair settlement. It's rare to get both. That's why access to consumer legal funding is so important to working families who need options.



*Based on industry data

Good morning. My name is David Schweigert, I am an attorney in Bismarck, North Dakota and I am here today to testify against HB 1372

This bill is not needed, not only is it my understanding that there presently are not any in state ND attorneys who are utilizing the funding which this bill is designed to protect against, it also does not address any problem that exists. However, this big bureaucracy bill does create a lot of traps and concerns for ND attorneys. My concerns regarding this bill are as follows:

1. **Legitimizing case recruitment.** I'm concerned it opens the door for the types of entities you are trying to regulate to now come into the state of North Dakota legitimately and recruit cases. In fact, after some of these agencies saw the bill that was introduced, they have asked to now come to annual lawyer's convention with the intent to try and recruit firms to partner with.
2. **Nobody in ND currently uses this.** To my knowledge there is currently not any ND firms that are using litigation funding that are located in ND. The consensus is that the local firms probably don't want to touch any of the recruited cases. This is not fixing a problem or even preventing one. It doesn't stop what is truly happening in that firms where their state bar allows them to partner with non-lawyers (i.e. Arizona and I believe Wisconsin) In those states we are seeing personal injury firms either owned by private equity and Hedge funds or in partnership with them. That arrangement is not covered by your bill.
3. **Prohibiting owners from loaning money to their firms.** After reading the bill several times, I'm fearful that this bill could be used to affect the owner of a law firm's ability to borrow money to the law firm. For instance, if I borrow money to SKM and take out a security interest pursuant to an agreement with the firm on the fees generated by the firm at 7% interest rate, that is used largely by another attorney in the firm to fund a case, I don't fall into the exceptions of "litigation financing". Although I suspect they will claim that is not the case, I don't want to take that chance when the penalty for violating this bill is similar to a Negligent Homicide - Class C Felony.
4. **Class C Felony.** Why are you subjecting attorneys to a Class C felony. If I have a client that may have entered into one of these agreements without me even knowing, I'm treated like a person who is guilty of negligent homicide. Similarly, if I am working as local counsel, but there is an out of state law firm that has funded the case, which I would have no way of knowing about, I am the one that is subject to the felony, not the attorney that took the funding. Even if I have them sign something saying that is not the case, I'm not sure that covers me. Where is the public being harmed in this matter? What if the violation is unintentional such as I described in No. 3 above.
5. **This bill creates needless bureaucracy/regulation** – How is this bill enforced. Every year do I as an attorney now have to attest as to what type of loans I may have taken out during the year. Would you like your business books to be audited and your loans questioned as to the source. My hope is that under MAGA guidance we have less regulation. This does the opposite.
6. **This is strictly an insurance bill.** I'm not sure how this bill has any positives for North Dakotans. It only benefits insurance companies. I think its telling that this is clearly an insurance bill since they are the ones who introduced it. They are the ones here testifying in favor of it. Where is the fairness in having a Plaintiff disclose the fact they had to borrow money and the defense not disclose that there is an insurer or likely a reinsurer paying for their bills to a jury. **Please vote no on this regulatory bill.**

2025 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1372
2/18/2025

A BILL for an Act to create and enact a new chapter to title 13 of the North Dakota Century Code, relating to litigation financing; to provide a penalty; and to provide for application.

8:30 a.m. Chairman Warrey opened the meeting.

Members Present: Chairman Warrey, Vice Chairman Ostlie, Vice Chairman Johnson, Representatives Bahl, Brown, Finley-DeVille, Grindberg, Kasper, Koppelman, D. Ruby, Schatz, Schauer, Vollmer

Member Absent: Representative Christy

Discussion Topics:

- No enforcement action
- Grant, revoke and appeal
- Litigation travel costs
- Rules of civil procedure
- Discovery documents
- Shared fees
- Legal issues

8:33 a.m. Representative Warrey opened the discussion with a prepared amendment #37972.

8:36 a.m. Blair Thoreson, Government Relations and Regulatory Affairs, Primacy Strategy Group, presented amendment language #37995.

8:37 a.m. Corey Krebs, Deputy Commissioner, ND Department of Financial Institutions available to discuss the amendment and answer questions.

9:17 a.m. Representative Koppelman moved Do Not Pass.

9:17 a.m. Representative D. Ruby seconded the motion.

Representatives	Vote
Representative Jonathan Warrey	Y
Representative Mitch Ostlie	Y
Representative Landon Bahl	Y
Representative Collette Brown	Y
Representative Josh Christy	AB
Representative Lisa Finley-DeVille	Y

Representative Karen Grindberg	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Mike Schatz	Y
Representative Austin Schauer	Y
Representative Daniel R. Vollmer	Y

Motion passed 13-0-1

9:18 a.m. Representative D. Ruby will carry the bill.

9:19 a.m. Chairman Warrey closed the meeting.

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE
HB 1372 ([25.0389.03000](#))

Industry, Business and Labor Committee (Rep. Warrey, Chairman) recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). HB 1372 was placed on the Eleventh order on the calendar.

25.0389.03001
Title.

Prepared by the Legislative Council
staff for Representative Warrey
February 14, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1372

Introduced by

Representative Klemin

Senator Larson

- 1 A BILL for an Act to create and enact a new chapter to title 13 of the North Dakota Century
2 Code, relating to litigation financing; ~~to provide a penalty~~; and to provide for application.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 4 **SECTION 1.** A new chapter to title 13 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

- 8 1. "Commissioner" means the commissioner of financial institutions.
9 2. "Consumer" means any individual who resides, is present, or is domiciled in this state
10 or who is or may become a plaintiff, claimant, or complainant in a civil action or in
11 pursuit of any claim or cause of action in this state.
12 3. "Entity" means any domestic or foreign corporation, partnership, limited partnership,
13 limited liability company, trust, fund, plan, or any other business, enterprise,
14 association, or organization of any kind or nature.
15 4. "Foreign country ~~or person~~ of concern" includes the following:
16 a. A foreign government or person listed in 15 CFR 791.4.
17 b. A country prohibited from purchasing or otherwise acquiring title to real property
18 in this state under section 47-01-09.
19 5. "Foreign entity of concern" means a partnership, association, corporation,
20 organization, or other combination of persons:

- a. Organized or incorporated in a foreign country of concern;
- b. Owned or controlled by the government, a political subdivision, or a political party of a foreign country of concern;
- c. That has a principal place of business in a foreign country of concern; or
- d. That is owned, organized, or controlled by or affiliated with a foreign organization that has been:
 - (a) Placed on the federal office of foreign assets control specially designated nationals and blocked persons list (SDN list); or
 - (b) Designated by the United States secretary of state as a foreign terrorist organization.

6. "Legal representative" means an attorney, group of attorneys, ~~or~~ law firm, or group of law firms, duly licensed and authorized to practice law and engaged to represent a consumer in a civil action or claim to recover damages ~~in this state.~~
7. "Litigation financier" means ~~any~~an individual, group of individuals, or entity engaged in, formed, created, or established for the purpose of engaging in the business of litigation financing or any other business or economic activity in which ~~the~~an individual, group of individuals, or entity receives ~~a percentage of an anticipated recovery in a civil legal action brought by a consumer, lawyer, or law firm asserting legal claims on behalf of a consumer,~~consideration in exchange for providing litigation financing. The term does not include:
 - a. A party to the claim or cause of action.
 - b. A legal representative engaged directly, or indirectly through another legal representative, to represent a party in conjunction with or in pursuit of the claim or cause of action.
 - c. An entity or insurer with a pre-existing contractual obligation to indemnify or defend a party to the legal claim.
 - d. Monetary transactions between the consumer and a financial institution, family members, state agency, or nonprofit organization.
8. "Litigation financing" means the financing, funding, ~~or~~advancing, or loaning of money to ~~pay for expenses or any other sums arising from a civil action, claim, or cause of~~

~~action, if the financing, funding, or advancing of money is provided by any person
other than a person that is:~~

~~a. A party to the civil action, claim, or cause of action;~~

~~b. A legal representative engaged, directly or indirectly, through another legal
representative, to represent a party in the civil action, claim, or cause of action; or~~

~~c. An entity or insurer with a pre-existing contractual obligation to indemnify or
defend a party to the civil action, claim, or cause of action. a person who has or may
pursue or assert a claim or cause of action or may become a plaintiff in conjunction
with or in pursuit of a claim or cause of action, including the person's legal
representative, and including to the financing of a portfolio of actions that includes the
action and involves the same counsel or affiliated counsel if:~~

~~a. The repayment of any portion of the amount financed, funded, advanced or
loaned is contingent on the outcome of the claim or cause of action, or is required
only if the person prevails in a claim or cause of action; or~~

~~b. 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 from a judgment, award, settlement, verdict, or other form of
monetary relief the person may receive or recover in pursuit of the claim or cause
of action.~~

9. a. "Litigation financing contract" means a written contract in which a person agrees
to provide litigation financing to any person in conjunction with a civil action or in
pursuit of any claim or cause of action in this state in consideration for:

(1) The payment of fees or other consideration to the person providing the
litigation financing; or

(2) Granting or assigning to the person providing the litigation financing 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 any consumer or other person may receive or recover in
relation to the civil action, claim, or cause of action.

b. The term does not include an agreement, contract, or 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 representing the consumer in the civil action, claim, or cause of action.~~

~~10. "Nationwide multistate licensing system" means the registry developed by the conference of state bank supervisors and the American association of residential mortgage regulators and owned and operated by the state regulatory register or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.~~

~~11.~~ "Regulated lender" means:

- a. A bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, money broker, deferred presentment service provider, residential mortgage lender licensee, development corporation, bank holding company, or mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:
 - (1) An agency of the state; or
 - (2) An agency of the federal government;
- b. A subsidiary of an entity described in subdivision a;
- c. A state agency or a federal agency that is authorized to lend money; and
- d. A corporation or other entity established by congress or the state which is owned, in whole or in part, by the United States or the state and is authorized to lend money.

License.

~~1.~~ A person may not engage in litigation financing in this state unless the litigation financier has received a license from the commissioner.

~~2.~~ If the licensed litigation financier is an entity, the entity must be active and in good standing with the secretary of state.

~~3.~~ The application for a license as a litigation financier must be in writing, under oath, and in the form prescribed by the commissioner. The application must include the following information:

- ~~a. The legal name of the litigation financier;~~
- ~~b. The physical street address and mailing address of the litigation financier;~~
- ~~c. A telephone number or electronic mail address at which the litigation financier may be contacted;~~
- ~~d. The physical street address and mailing address of the licensed financier's licensed office and the name of the registered agent at the licensed office who is authorized to accept service of process on behalf of the licensed financier; and~~
- ~~e. Any other information the commissioner considers necessary.~~
- ~~4. A litigation financier subject to licensure shall file an amended application within twenty business days whenever the information contained in the most recently filed application changes, becomes inaccurate, or incomplete in any respect.~~
- ~~5. The commissioner may prescribe forms to carry out this chapter, including the use of the nationwide multistate system.~~
- ~~6. At the time of making an application, the applicant shall include payment of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and four hundred dollars for the annual license fee. Fees must be deposited in the financial institution's regulatory fund.~~
- ~~7. All documents and information filed with the commissioner are public records.~~
- ~~8. The commissioner's duty to file documents under this section is ministerial. The commissioner's filing or refusing to file a document does not create a presumption that:~~
 - ~~a. The document does or does not conform to the requirements of this chapter; or~~
 - ~~b. The information contained in the document is correct or incorrect.~~
- ~~9. Additional fees may be assessed to cover costs associated with the use of the nationwide multistate licensing system.~~
- ~~**Surety bond required.**~~
 - ~~1. Each licensee shall maintain a surety bond in an amount not less than fifty thousand dollars. The surety bond must be in a form prescribed by the commissioner.~~
 - ~~2. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.~~

~~3. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.~~

~~**Minimum net worth required.**~~

~~1. A minimum net worth must be maintained continuously by every licensee in accordance with this section.~~

~~2. Minimum net worth must be maintained in the amount of twenty-five thousand dollars.~~

~~3. If the net worth of a licensee falls below the minimum net worth set forth in subsection 1, the licensee shall provide a plan, subject to the approval of the commissioner, to increase the licensee's net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner which states the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license.~~

~~**Expiration of licensure -- Renewal.**~~

~~1. Licensure under this chapter expires December thirty-first of each year.~~

~~2. Licensure may be renewed for the ensuing twelve-month period upon application and the payment to the commissioner of the annual license fee, which is not subject to refund, before December first of each year.~~

~~3. The form and content of renewal applications must be determined by the department of financial institutions and a renewal application may be denied on the same grounds as would justify denial of an initial application.~~

~~4. If a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of the license.~~

~~5. The commissioner may deny an application to renew a license if the licensee no longer meets the criteria for licensure or otherwise fails to comply with this chapter.~~

~~**Response to department requests.**~~

~~An applicant, licensee, or other person subject to this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the request by the department of financial institutions. If the request for~~

~~information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, the department may deny the application.~~

~~**Revocation of license - Suspension of license - Surrender of license.**~~

~~1. The commissioner may issue upon any licensee an order suspending or revoking a licensee's license if the commissioner finds:~~

~~a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.~~

~~b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any rule or order lawfully made under the authority of this chapter.~~

~~c. Any fact or condition existing at the time of the original application for the license which clearly would have warranted the department of financial institutions in refusing originally to issue the license.~~

~~d. The licensee has failed to maintain the required bond.~~

~~e. The licensee has failed to maintain registration with the secretary of state if so required.~~

~~2. The order must contain a notice of opportunity for hearing under chapter 28-32.~~

~~3. If no hearing is requested within twenty days of the date the order is served upon the licensee, the order is final. If a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order. The final order is final suspending or revoking the license.~~

~~4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of the license pending investigation, the commissioner may enter an order suspending the license for a period not exceeding the time required to serve upon the licensee written notice plus sixty days, pending the holding of a hearing as prescribed in this chapter.~~

~~5. Any licensee may surrender the licensee's license by providing the department of financial institutions with written notice of its surrender, but the surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender of the license.~~

~~**Suspension and removal of money broker officers and employees.**~~

~~1. The commissioner of financial institutions may issue upon a current or former litigation financing officer or employee and upon the licensee involved an order stating:~~

~~a. That the current or former officer or employee is engaging or has engaged in any of the following conduct:~~

~~(1) Violating a law, rule, order, or written agreement with the commissioner.~~

~~(2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving litigation financing activity.~~

~~(3) Performing an act of commission or omission or practice that is a breach of trust or a breach of fiduciary duty.~~

~~b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.~~

~~2. The order must contain a notice of opportunity for hearing under chapter 28-32.~~

~~3. If a hearing is not requested within twenty days of the date the order is served, the order is final. If a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order.~~

~~4. A contested or default suspension or removal order is effective immediately upon issuance on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. Any current or former officer or employee suspended or removed from employment and participation within the conduct or the affairs of a licensee under this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.~~

~~5. When any current or former officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the individual from office or prohibit the individual from further participation in the affairs of the licensee, or both. The order is effective immediately upon issuance of~~

~~the order on the licensee and the individual charged, and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the commissioner may order the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.~~

Litigation financing protections.

1. A litigation financier may not:

- a. Accept any commissions, referral fees, rebates, or other forms of consideration from any person rendering any services to the consumer.
- b. ~~Receive~~Upon written request from the consumer or consumer's attorney, receive or recover any payment that exceeds ~~thirty-six~~twenty-five percent of the amount of ~~the gross proceeds from the legal claim~~any judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil action, claim, or cause of action that is the subject of the litigation contractthe gross proceeds from the legal claim. A written request under this subdivision must include an attestation of the final amount of the gross proceeds from the legal claim.
- c. Advertise false or misleading information regarding its products or services.
- d. Refer or require any consumer to hire or engage any person providing any goods or rendering any services to the consumer.
- e. Fail to promptly deliver a fully completed and signed litigation financing contract to the consumer and the consumer's legal representative.
- f. Attempt to secure a remedy or obtain a waiver of any remedy, including compensatory, statutory, or exemplary damages, which the consumer may or may not be entitled to pursue or recover otherwise.
- g. Offer or provide legal advice to the consumer.
- h. Assign a litigation financing contract in whole or in part.
- i. Report a consumer to a credit reporting agency if insufficient funds remain to repay the litigation financier in full from the proceeds received from any judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil

1 action, claim, or cause of action that is the subject of the litigation financing
2 contract; and.

3 j. ~~Demand, request, receive, or exercise any right to~~Direct influence, affect, or
4 otherwise make any decision in the handling, conduct, administration, litigation,
5 settlement, or resolution of any civil action, claim, or cause of action in which the
6 litigation financier has provided litigation financing. All rights remain solely with the
7 consumer and the consumer's legal representative.

8 k. Knowingly enter an agreement creating a right for anyone, other than the named
9 parties, counsel of record, or law firm of record, to receive or make any payment
10 that is contingent on the outcome of a claim, or cause of action, the terms of
11 which are to be satisfied by funds directly sourced, in whole or in part, from a
12 foreign entity of concern.

13 l. A litigation financier may not enter a commercial litigation financing contract
14 directly or indirectly with a foreign entity of concern or a foreign country or person
15 of concern.

16 2. A legal representative who renders any services to the consumer may not have a
17 financial interest in litigation financing and may not receive any commissions, referral
18 fees, rebates, or other forms of consideration from any litigation financier or the
19 litigation financier's employees, owners, or affiliates.

20 ~~**Litigation financing contract - Disclosures:**~~

21 ~~1. The terms and conditions of a litigation financing contract must be set forth in a fully~~
22 ~~completed written contract with no terms or conditions omitted.~~

23 ~~2. The litigation financing contract must identify who is responsible for paying the~~
24 ~~litigation financier, the source the funds, and when the funds are to be paid to the~~
25 ~~litigation financier.~~

26 ~~3. The litigation financing contract must state the amount of funding to be provided to the~~
27 ~~consumer and the future amounts owed to the litigation financier or the method of~~
28 ~~calculating the amounts owed to the litigation financier.~~

29 ~~4. The litigation financing contract must reflect all costs and fees and must show the~~
30 ~~maximum amount a litigation financier may own of the consumer's recovery.~~

- ~~5. On execution of a litigation financing contract, a litigation financier may not amend the terms or conditions of the litigation financing contract without full disclosure to and the prior written consent of all parties to the litigation financing contract.~~
- ~~6. A litigation financing contract must set forth the name, physical street address, and mailing address of the litigation financier in the litigation financing contract.~~
- ~~7. A litigation financing contract must contain the following disclosures that constitute material terms and conditions of the litigation financing contract and must be typed in at least fourteen-point boldface type and be placed clearly and conspicuously immediately above the consumer's signature line in the litigation financing contract:~~
- ~~———— IMPORTANT DISCLOSURES ——— PLEASE READ CAREFULLY~~
- ~~1. Right to Cancellation: You may cancel this litigation financing contract without penalty or further obligation within five (5) business days from the date you sign this contract or the date you receive financing from the litigation financier, whichever date is later. You may cancel by sending a notice of cancellation to the litigation financier and returning to the litigation financier any funds received from the litigation financier at the litigation financier's address set forth in this contract.~~
- ~~2. The maximum amount the litigation financier may receive or recover from any contingent payment may not exceed twenty-five percent (25%) of the amount of any judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil action, claim, or cause of action that is the subject of this litigation contract.~~
- ~~3. The litigation financier agrees that it has no right to, and will not demand, request, receive, or exercise any right to, influence, affect, or otherwise make any decision in the handling, conduct, administration, litigation, settlement, or resolution of your civil action, claim, or cause of action. All of these rights remain solely with you and your legal representative.~~
- ~~4. If there is no recovery of any money from your civil action, claim, or cause of action, or if there is not enough money to satisfy in full the portion assigned to the litigation financier, you will not owe anything to the litigation financier.~~

~~5. You are entitled to a fully completed contract with no terms or conditions omitted prior to signing. Before signing this contract, you should read the contract completely and consult an attorney.~~

~~8. If the consumer is represented by a legal representative in the civil action, claim, or cause of action that is the subject of the litigation financing contract, the consumer must provide the litigation funding contract to the consumer's legal representative. Upon receipt, the legal representative shall acknowledge in the contract that the legal representative and the legal representative's employer and employees have not received or paid a referral fee or any other consideration from or to the litigation financier and have no obligation to do so in the future.~~

Litigation financing contracts - Service.

1. If a party or party's ~~attorney~~legal representative initiates a civil action and is a party to a litigation financing ~~agreement~~contract, the party or party's ~~attorney~~legal representative shall serve a copy of the litigation financing contract with the complaint.

~~2. If a party or party's attorney is served with a litigating financing contract, the person shall serve a copy of any insurance policy relevant to the civil action to the other party within fourteen days.~~

~~3. If either party in a civil action enters a litigation financing agreementcontract after the commencement of the civil action, the party shall serve a copy of the agreement on the other party within fourteen days.~~

Exemptions.

1. This chapter does not apply to ~~the following~~:

~~1. A nonprofit entity that provides litigation financing, directly or indirectly, for the benefit of the nonprofit or one or more of its members without receiving, in consideration for the litigation financing:~~

~~a. The payment of interest, fees, or other consideration; or~~

~~b. Except for in-house counsel of the nonprofit, any right to recovery or payment from the amount of a judgment, award, settlement, verdict, or other form of monetary relief obtained in the civil action, claim, or cause of action;~~

~~2. A regulated lender that does not receive, in consideration for loaning money to any person, a right to receive payment from the value of any proceeds or other~~

consideration realized from a judgment, award, settlement, verdict, or other form of monetary relief a person may receive or recover in relation to a civil action, claim, or cause of action.

2. A litigation financing contract that complies with this chapter is not a loan and is not subject to provisions of law governing loans or investment contracts. To the extent that this chapter conflicts with any other law, this chapter supersedes that law for purposes of regulating consumer litigation financing transactions.

~~**Glass actions.**~~

~~1. This chapter applies to any civil action filed or certified as a class action in which litigation financing is provided.~~

~~2. In addition to the disclosure requirements set forth in this chapter, the legal representative of the putative class shall disclose to all putative class members, any relationship between the legal representative and the litigation financier.~~

~~3. A class member is entitled to receive from the class counsel a true and correct copy of the litigation financing contract on request.~~

~~**Regulatory oversight – Rulemaking – Records.**~~

~~1. The department of financial institutions shall administer and enforce this chapter. The department may adopt rules reasonably necessary to carry out this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued under this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.~~

~~2. Insofar as consistent with the provisions of law, the department of financial institutions may:~~

~~a. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness which must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with the chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of an~~

~~individual who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.~~

~~b. Establish codes of ethical conduct for licensees.~~

~~3 Every licensee licensed under this chapter shall keep a record of all sums collected by the licensee and of litigation financing completed as a result of the licensee's efforts for six years from the date of last entry. The records of a licensee may be maintained electronically if the records can be reproduced upon request by the department of financial institutions and within the required statutory time period provided in this section. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records.~~

~~4 When it appears to the department of financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction prohibited by this chapter, or by any order of the department issued under this chapter or which is declared to be illegal in this chapter, the department may:~~

~~a. Issue any order that is effective upon issuance, including cease and desist, stop, and suspension orders, which the department deems necessary or appropriate in the public interest or for the protection of the public; provided, however, that any person aggrieved by an order issued under this subsection may request a hearing before the department if the request is made within ten days after receipt of the order. The hearing and any appeal of the hearing must be held in accordance with chapter 28-32.~~

~~b. Apply to the district court of Burleigh County, for an injunction restraining the person and the agents, employees, partners, officers, and directors of the person from continuing the act, practice, or transaction and for the other relief the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance of any defendants and their agents, employees, partners, officers, or directors, and the production of the documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof~~

1 ~~of any of the offenses described in this section, the court may grant the injunction~~
2 ~~as the facts may warrant. The court may not require the department to post a~~
3 ~~bond.~~

4 ~~— **Investigations, subpoenas, and examination authority.**~~

5 ~~— In addition to any authority allowed under this chapter, the commissioner may conduct~~
6 ~~investigations and examinations as follows:~~

7 ~~— 1. The department of financial institutions:~~

8 ~~— a. May make the public or private investigation or examination within or outside this~~
9 ~~state as it deems necessary to determine whether any person has violated or is~~
10 ~~about to violate any provision of this chapter or any rule or order, or to aid in the~~
11 ~~enforcement of this chapter or in the prescribing of rules and forms under this~~
12 ~~chapter. The licensee shall pay an investigation or examination fee and must be~~
13 ~~charged by the department of financial institutions at an hourly rate to be set by~~
14 ~~the commissioner, sufficient to cover all reasonable expenses of the department~~
15 ~~associated with the visitation provided for by this section. Fees must be~~
16 ~~deposited in the financial institutions regulatory fund.~~

17 ~~— b. May require or permit any person to file a statement in writing, under oath, or~~
18 ~~otherwise as the department determines, as to all the facts and circumstances~~
19 ~~concerning the matter to be investigated or examined.~~

20 ~~— c. May publish information concerning any violation of this chapter or any rule or~~
21 ~~order under the chapter.~~

22 ~~— 2. For the purpose of any investigation, examination, or proceeding under this chapter,~~
23 ~~the department of financial institutions may administer oaths and affirmations,~~
24 ~~subpoena witnesses, compel the attendance of witnesses, take evidence, and require~~
25 ~~the production of any books, papers, correspondence, memoranda, agreements, or~~
26 ~~other documents or records the department deems relevant or material to the inquiry.~~

27 ~~— 3. In the case of a failure or refusal to obey a subpoena issued to any person, the district~~
28 ~~court, upon application by the department of financial institutions, may issue to the~~
29 ~~person an order requiring the person to appear before the department, to produce~~
30 ~~documentary evidence if so ordered, or to give evidence touching the matter in~~

question under investigation or examination. Failure to obey the order of the court may be punished by the court as a contempt of court.

~~4. An individual is not excused from attending and testifying or from producing any document or record before the department of financial institutions, or in obedience to the subpoena of the department, or in any proceeding instituted by the department, on the grounds that the testimony or evidence, documentary or otherwise, required of the individual may tend to incriminate the individual or subject the individual to a penalty forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.~~

~~5. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this chapter, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:~~

~~a. Criminal, civil, and administrative history information, including nonconviction data;~~

~~b. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described under the Fair Credit Reporting Act [15 U.S.C. 1681a]; and~~

~~c. Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence.~~

~~6. For purposes of investigating violations or complaints arising under this chapter, or for purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter.~~

~~7. Each licensee or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of the~~

1 ~~licensee or person subject to this chapter. The commissioner shall have access to the~~
2 ~~books and records and interview the officers, principals, mortgage loan originators,~~
3 ~~employees, independent contractors, agents, and customers of the licensee or person~~
4 ~~subject to this chapter concerning their business.~~

5 ~~8. Each licensee or person subject to this chapter shall make or compile reports or~~
6 ~~prepare other information as directed by the commissioner to carry out the purposes of~~
7 ~~this section, including:~~

8 ~~a. Accounting compilations;~~

9 ~~b. Information lists and data concerning litigation financing transactions in a format~~
10 ~~prescribed by the commissioner; or~~

11 ~~c. Any other information deemed necessary to carry out the purposes of this~~
12 ~~section.~~

13 ~~9. In making any investigation or examination authorized by this chapter, the~~
14 ~~commissioner may control access to any documents and records of the licensee or~~
15 ~~person under investigation or examination. The commissioner may take possession of~~
16 ~~the documents and records or place a person in exclusive charge of the documents~~
17 ~~and records in the place in which the records are usually kept. During the period of~~
18 ~~control, an individual may not remove or attempt to remove any of the documents and~~
19 ~~records except pursuant to a court order or with the consent of the commissioner.~~
20 ~~Unless the commissioner has reasonable grounds to believe the documents or~~
21 ~~records of the licensee have been, or are at risk of being altered or destroyed for~~
22 ~~purposes of concealing a violation of this chapter, the licensee or owner of the~~
23 ~~documents and records may have access to the documents or records as necessary~~
24 ~~to conduct its ordinary business affairs.~~

25 ~~10. To carry out the purposes of this section, the commissioner may:~~

26 ~~a. Retain accountants or other professionals and specialists as examiners, auditors,~~
27 ~~or investigators to conduct or assist in the conduct of examinations or~~
28 ~~investigations;~~

29 ~~b. Enter agreements or relationships with other government officials or regulatory~~
30 ~~associations to improve efficiencies and reduce regulatory burden by sharing~~

- 1 ~~resources, standardized or uniform methods or procedures, and documents,~~
2 ~~records, information, or evidence obtained under this section;~~
- 3 ~~c. Use, hire, contract, or employ publicly or privately available analytical systems,~~
4 ~~methods, or software to examine or investigate the licensee, individual, or person~~
5 ~~subject to this chapter;~~
- 6 ~~d. Accept and rely on examination or investigation reports made by other~~
7 ~~government officials, within or without this state; and~~
- 8 ~~e. Accept audit reports made by an independent certified public accountant for the~~
9 ~~licensee or person subject to this chapter in the course of that part of the~~
10 ~~examination covering the same general subject matter as the audit and may~~
11 ~~incorporate the audit report in the report of the examination, report of~~
12 ~~investigation, or other writing of the commissioner.~~
- 13 ~~11. The authority of this section remains in effect, whether a licensee or person subject to~~
14 ~~this chapter acts or claims to act under any licensing or registration law of this state or~~
15 ~~claims to act without the authority.~~
- 16 ~~12. A licensee or person subject to investigation or examination under this section may not~~
17 ~~knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records,~~
18 ~~computer records, or other information.~~
- 19 ~~**Act violation - Unenforceable contract.**~~
- 20 ~~Any violation of this chapter by the litigation financier renders the litigation financing contract~~
21 ~~unenforceable by the litigation financier or any successor-in-interest to the litigation financing~~
22 ~~contract.~~
- 23 ~~**Penalty.**~~
- 24 ~~1. Any person violating any provision of this chapter or any rule or order of the~~
25 ~~department of financial institutions made under this chapter or who engages in any~~
26 ~~act, practice, or transaction declared by any provision of this chapter to be unlawful is~~
27 ~~guilty of a class C felony.~~
- 28 ~~2. The commissioner may impose a civil money penalty not to exceed one hundred~~
29 ~~thousand dollars for each occurrence and one thousand dollars per day for each day~~
30 ~~the violation continues after issuance of the order against any person who violates a~~
31 ~~law, rule, written agreement, or order under this chapter.~~

1 ~~3. An interested party may appeal the assessment of a civil money penalty under the~~
2 ~~provisions of chapter 28-32 by filing a written notice of appeal within twenty days after~~
3 ~~service of the assessment of civil money penalties.~~

4 ~~4. A civil money penalty collected under this section must be paid to the department of~~
5 ~~financial institutions and deposited in the financial institution's regulatory fund.~~

6 ~~**Confidentiality:**~~

7 ~~1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements~~
8 ~~under any federal law, chapter 44-04, or section 6-01-07.1, regarding the privacy or~~
9 ~~confidentiality of any information or material provided to the nationwide multistate~~
10 ~~licensing system and registry, and any privilege arising under federal or state law,~~
11 ~~including the rules of any federal or state court, with respect to the information or~~
12 ~~material, continue to apply to the information or material after the information or~~
13 ~~material has been disclosed to the nationwide multistate licensing system and registry.~~
14 ~~Any information and material may be shared with all state and federal regulatory~~
15 ~~officials with mortgage industry oversight authority without the loss of privilege or the~~
16 ~~loss of confidentiality protections provided by federal law, chapter 44-04, or section~~
17 ~~6-01-07.1.~~

18 ~~2. For these purposes, the commissioner may enter agreements or sharing~~
19 ~~arrangements with other governmental agencies, the conference of state bank~~
20 ~~supervisors, the American association of residential mortgage regulators, or other~~
21 ~~associations representing governmental agencies.~~

22 ~~3. Information or material that is subject to a privilege or confidentiality under~~
23 ~~subsection 1 is not subject to:~~

24 ~~a. Disclosure under any federal or state law governing the disclosure to the public of~~
25 ~~information held by an officer or an agency of the federal government or the~~
26 ~~respective state; or~~

27 ~~b. Subpoena or discovery, or admission into evidence, in any administrative~~
28 ~~process, unless with respect to any privilege held by the nationwide multistate~~
29 ~~licensing system and registry with respect to the information or material, the~~
30 ~~person to whom the information or material pertains waives, in whole or in part, in~~
31 ~~that privilege.~~

1 ~~4. The commissioner shall take all necessary steps, under any applicable law or rule, to~~
2 ~~protect the disclosure of information or material subject to a privilege or confidentiality~~
3 ~~under subsection 1. Records subject to a privilege or confidentiality under~~
4 ~~subsection 1 may be required to be disclosed only pursuant to an order of the court.~~
5 ~~The court ordering the disclosure shall issue a protective order to protect the~~
6 ~~confidential nature of the records.~~

7 ~~5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of~~
8 ~~confidential supervisory information or any information or material described in~~
9 ~~subsection 1 which is inconsistent with subsection 1, is superseded by the~~
10 ~~requirements of this section.~~

11 ~~6. Except for provisions of chapter 6-08.1 that are inconsistent with this chapter, chapter~~
12 ~~6-08.1 applies to all money brokers licensed under this chapter.~~

13 **SECTION 2. APPLICATION.** This Act applies to any civil action commenced after the
14 effective date of this Act.

Litigation financing protections.

1. A litigation financier may not:

CHANGE THIS

h. Assign a litigation financing contract in whole or in part ; .

TO THIS:

(1) Assign a contract in whole or in part to a third party. Provided, however, if the company retains responsibility for collecting payment, administering, and otherwise enforcing the consumer litigation funding contract, the prohibition in this subdivision (10) shall not apply to an assignment:

(A) to a wholly owned subsidiary of the company;

(B) to an affiliate of the company that is under common control with

(C) granting a security interest under Article 9 of the Uniform Commercial Code or as otherwise permitted by law.