



March 18, 2025

Chairman Lampton, Vice Chair Craig, Ranking Member Tims and the members of the Insurance 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 that represents the companies that offer Consumer Legal Funding across the country to include here in Ohio.

I first want to address what I believe is some confusion as to what is being regulated in HB 105.

Consumer Legal Funding is where the funds that we provide a consumer are used for household expenses, such as helping to pay the mortgage, rent, keeping the lights on and putting food on the table.

Litigation Financing is used to just that, financing the litigation. The funds provided are used to pay for attorney fees, deposition cost and filing fees. These are typically Business to Business transactions and not provided to the consumer.

The average transaction for consumers is between \$3,000 to \$5,000. The average transaction in litigation financing starts around \$3,000,000

To be clear consumers are not getting Litigation Financing.

To set the record straight, **Ohio has had a statute on the books to regulate what is currently called “non-recourse civil litigation advances” since 2008.** Ohio was the second state in the country to institute such regulations. In fact, when that legislation was introduced, it passed unanimously in the House and Senate. The effort was led by then Representative Lou Blessing and Senator Bill Seitz, and there was no opposition testimony from the Ohio Insurance Institute, the Ohio Chamber of Commerce, or NFIB Ohio. In fact, there was no opposition to the bill before being approved by the 127th General Assembly.

Many of the provision in SB 10 are currently outlined in ORC 1349.55: a consumer has to have a pending civil claim before non-recourse funding is considered, the consumer has to be represented by an attorney, the contract shall clearly spell out the amount being advance, the total dollar amount to be repaid by the consumer, the APR being charged as well as all fees, and that the company has no involvement in the case what so ever until a settlement is reached.

While we feel Ohio's statute is working well, and we're not aware of any consumer complaints to the Ohio Attorney General or Consumer's Counsel, with any piece of legislation that is 17 years old it may need to be refreshed. We are not opposed to that. The problem is in its current state SB 10 eliminates the product from Ohio all together, along with the ability of consumers to have access to a fair and just settlement for their legal claim.

The biggest issue we have with the current legislation is the rate caps outlined in the bill at 10% on what we can charge a consumer for the advance. That would eliminate the industry in Ohio as there is no ability to make any money. The 10% profit restriction is at or below the cost of capital that most of my companies are subject to let alone the cost of doing business and any losses they encounter offering the product.

To address this, we would like to propose that we put in a couple of different types of caps in its place.

The first would be to stop all fees at 42 months. In addition to that, each contract will clearly state what the maximum amount the consumer would be obligated under the terms of the contract on day one. This way the consumer and their attorney will know right from the beginning what is the maximum this product will cost them, which is currently not the case in the existing law.

- The consumer legal funding company is prohibited from charging any fees in excess of 42 months from the funding date and each contract shall state what is the consumers obligation in 6-month intervals to include the maximum total amount to be assigned by the consumer to the company.

But we would also like to add in some additional consumer protections that are not in the current draft of the legislation.

In their written testimony the National Insurance Crime Bureau (NICB) referred to a case in New York where an organized insurance fraud scheme was perpetrated, and consumers were enticed to file potentially fraudulent claims.

To address that we would like to offer the following additional language to the prohibited section of the bill:

- Colluding with or knowingly assisting a lawyer or law firm that is enticing or intends to entice a consumer to bring a claim that the company knows or has reason to know is fabricated or otherwise not brought in good faith. Any consumer legal funding contract entered into in violation of this paragraph shall be void ab initio

- Knowingly offering or colluding to provide funding as an inducement to a consumer who is presently represented by counsel to terminate that engagement and engage such lawyer or law firm to represent them in the same matter. Any consumer legal funding contract entered into in violation of this paragraph shall be void ab initio;

By adding in these additional paragraphs, you are sending a strong message to those who want to fraud the legal system and use consumer legal funding to do it that this will not be tolerated.

We would also like to strengthen the section regarding attorneys having a financial interest in these companies.

Our recommendation is to include the following:

- Section 1357.04
 - Added in (3)
 - An attorney or law firm retained by the consumer in the legal claim, or immediate family member of a consumer's retained attorney, shall not have a financial interest in a consumer legal funding company offering consumer legal funding, nor provide consumer legal funding directly to a consumer.
 - Added in (4)
 - Any attorney who has referred the consumer to the consumer's retained attorney shall not have a financial interest in a consumer legal funding company offering consumer legal funding to that consumer

By adding in these sections, you are ensuring that the attorney involved in the case with the consumer is not also profiting from the consumer via the consumer's legal funding transaction.

Finally, I would like to address a comment in the written testimony that was submitted by the Ohio Farm Bureau.

In their statement they said that these transactions "Encourage Meritless Lawsuits". In 100% of the time in which our companies offer this product to the consumer there must be an existing legal claim, and they must be represented by an attorney before the process can begin. If those two criteria are not met, then the conversation with the consumer stops. We are not encouraging any litigation. We are assisting those consumers who already have a legal claim in the system get the fair and just settlement that they are entitled to and not be forced to accept a lesser amount just because they are under financial stress.

In addition, it would not be a good financial decision for companies to put funds into a legal claim that is meritless and there is no chance of success. By doing this they would be out of business in a short period of time.

I thank you for your time and consideration and hope to work with you on another piece of legislation that will be passed by the legislature unanimously.

Sincerely,

Eric Schuller

Eric Schuller
President

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Differences between Consumer Legal Funding and Litigation Financing



Consumer Legal Funding

Litigation Financing

Purpose	Consumer legal funding provides financial assistance to an individual plaintiff participating in legal disputes for household needs and <u>NOT</u> legal expenses.	Litigation financing, typically assists businesses and corporations in navigating the complex legal landscape <u>to pay for the litigation</u> to bring a case forward.
Types of cases	Primarily focuses on consumers who are involved in a personal injury case, car accidents, wrongful termination and other similar disputes.	Typically, companies or large organizations who are involved with intellectual property litigation, shareholder lawsuits, breach of contract, international arbitration, and antitrust claims.
Funding amounts	Typically, a few <u>thousand</u> dollars.	Typically, in the <u>millions</u> of dollars
Repayment	<u>ONLY</u> if the plaintiff receives a successful settlement or judgment in their favor, the repayment to the funding company is contingent upon that outcome. In other words, if the plaintiff loses or drops the case, no compensation is required, ensuring minimal risk for the plaintiff.	Litigation financing operates on a non-recourse basis, meaning that compensation is contingent on the outcome of the litigation. If no settlement or judgement, no repayment.

ARC Changes to HB 107/SB 10

- Changed “Consumer Litigation Funding” to “Consumer Legal Funding”
 - This better represents what the product does and does not do
 - It does not fund the litigation as should not be referred to as such
- Section 1357.02
 - Under 6 (c)
 - Removed the first “Only”
 - There are times when a consumer wants to fulfill their obligations under the contract early with different funds.
 - By keeping in the first “Only” this would prohibit the consumer from having the ability to pay off the contract early.
- Section 1357.03 (J)
 - (J)
 - Removed 10% Rate restriction as that amount puts the industry out of business
 - Replaced with still under prohibited acts
 - (J) Colluding with or knowingly assisting a lawyer or law firm that is enticing or intends to entice a consumer to bring a claim that the company knows or has reason to know is fabricated or otherwise not brought in good faith. Any consumer legal funding contract entered into in violation of this paragraph shall be void ab initio
 - Added in (L)
 - Knowingly offering or colluding to provide funding as an inducement to a consumer who is presently represented by counsel to terminate that engagement and engage such lawyer or law firm to represent them in the same matter. Any consumer legal funding contract entered into in violation of this paragraph shall be void ab initio;
 - Added in (M)
 - The consumer legal funding company is prohibited from charging any fees in excess of 42 months from the funding date and each contract shall state what is the consumers obligation in 6-month intervals to include the maximum total amount to be assigned by the consumer to the company.
- Section 1357.04
 - Added in (3)
 - An attorney or law firm retained by the consumer in the legal claim, or immediate family member of a consumer’s retained attorney, shall not have a financial interest in a consumer legal funding company offering consumer legal funding, nor provide consumer legal funding directly to a consumer.

- Added in (4)
 - Any attorney who has referred the consumer to the consumer's retained attorney shall not have a financial interest in a consumer legal funding company offering consumer legal funding to that consumer