ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING

Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Senate Judiciary Committee, I would like to thank you for the opportunity to speak to you today on Senate Bill 94 offered by Senator Wilson. My name is Eric Schuller, and I am the President of the Alliance for Responsible Consumer Legal Funding, also known as ARC, a national trade association of Consumer Legal Funding companies across the country. Our industry was at the forefront of the passage of HB 248 in the 127th General Assembly that created the current regulations relative to non-recourse legal funding found in ORC 1349.55. While our association would support some updates to Ohio's current statute, unfortunately I am here in opposition to the bill in its current form.

Consumer Legal Funding is the practice of providing financial assistance to a consumer who has a pending legal claim, such as a car accident. The money that we provide consumers is used for immediate household needs, such as rent, mortgage, car payments and putting food on the table. Per current Ohio law, the funds that we provide cannot be used to finance the litigation. Our average funding to a consumer is around $2,000.

Unfortunately, in its current form SB 94 lumps us in with those companies that finance the actual litigation. In fact, in previous testimony in support of the legislation the US Chamber of Commerce stated, "Private funders active in the United States have a whopping $9.52 billion under management for commercial case investment". As I stated that is not the case with our industry and what is under the current statute in Ohio that SB 94 is looking to be amended.

What I believe is happening here is the attempt to combine the two, but very distinctive different products, together under one statute. It is like trying regulating credit cards and bitcoin in the same statute. They both can be used to pay for things, but they are two distinctive and very different products, and as such should be regulated separately.

If I may, I'd like to address some of the issues that were brought up in previous testimony. In doing so I hope to address why there is so much confusion on the issue.

It was stated before that this product encourages meritless and vexatious litigation. In every single incident that ***consumer legal funding*** is used in, the legal claim is already in the system. We only work with consumers who have an existing legal claim and who have already engaged an attorney. Therefore, we are not encouraging any litigation, it is already there.

The examples that were offered by the US Chamber of Commerce in their testimony were those of companies that pay for the litigation itself. That is not what is being regulated under the current statute and the proposed legislation.

Additionally, it was stated that this product deters reasonable settlements and prologs litigation. What we do is allow a consumer to get a fair and just settlement and not be forced to accept the first offer that comes along just because they are in a financial stress. If helping consumers get the fair value for their legal claim is prolonging litigation, then I guess to some degree we do.

It was also stated that the companies have control over the litigation. Under the current statute it is clearly stated in the contract that is not the case.

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From current Ohio Revised Code 1349.55 (B)(3):
The contract shall contain the following statement in at least twelve-point boldface type: "THE COMPANY AGREES THAT IT SHALL HAVE NO RIGHT TO AND WILL NOT MAKE ANY DECISIONS WITH RESPECT TO THE CONDUCT OF THE UNDERLYING CIVIL ACTION OR CLAIM OR ANY SETTLEMENT OR RESOLUTION THEREOF AND THAT THE RIGHT TO MAKE THOSE DECISIONS REMAINS SOLELY WITH YOU AND YOUR ATTORNEY IN THE CIVIL ACTION OR CLAIM."

Under current Ohio law that is prohibited.

There are several more examples of inconsistent statements that were made that I will not go into, but simply state that the mixing the two products into one statute is not good for your constituents who rely on this product for every day household needs. We ask that if the body wants to regulate those companies that provide financing to bring the litigation forward, i.e. pay for court cost, attorney's fees and such, that they do so under a separate statute and legislation.

I would next like to go through some of the concerns we have with the current version of SB 94. Again, we are not opposed to the entire bill, but the parts we have concerns with are important.

In Section 1349.552

> *(I) Assign, which includes securitizing, a non-recourse civil litigation advance, in whole or in part, to a third party;*

This provision of the bill eliminates the ability of the companies to get capital to operate. What this provision does is prohibit the companies from using their existing receivables to get additional capital to fund their existing operations. If this were to pass, this industry would be the only industry, to our knowledge, that would have this limitation on it in the State of Ohio. In fact, when this was introduced and put into law in 2014 in Tennessee the companies pulled out of the state. It was not until 2017 when it was repealed that the companies came back into Tennessee. We respectfully ask that this be stricken from the bill.

Section 1349.553

> *(A) A company shall not charge a consumer entering into a non-recourse civil litigation advance contract an annual fee in excess of ten per cent of the original amount of money provided to the consumer under the non-recourse civil litigation advance. The annual fee authorized in this division shall not be charged more than once each year during the term of the non-recourse civil litigation advance.*

The rate cap of 10% puts the industry out of business. When rate caps were introduced and passed in Arkansas at 17% and West Virginia at 18% the industry left those states. At those rates the companies cannot operate. We again respectfully request that this section be stricken.

Section 1349.553

> *(D) Any interest rate charged for the non-recourse civil litigation advance shall be reasonable and not overly excessive. In determining what constitutes a reasonable interest rate, the rate established under section 5703.47 of the Revised Code shall be considered. In no circumstance shall the interest rate*

exceed the rate established under section 5703.47 of the Revised Code plus an additional three per cent.

This section again puts the industry out of business in the state as well. It is also unclear which section of the bill, i.e., part (A) or part (D) would prevail if they are in conflict. We request that this be stricken from the bill.

Section 1349.554

(A) If a non-recourse civil litigation advance is executed before the consumer files a complaint or similar demand in the consumer's underlying claim or action, the consumer shall file with the court or other tribunal and serve on the opposing party or parties a copy of the executed nonrecourse civil litigation advance at the same time as the original complaint. The consumer shall file with the court or other tribunal and serve on each opposing party a copy of any amendments or modifications made to the previously executed nonrecourse civil litigation advance.

(B) If a non-recourse civil litigation advance is executed after the consumer files a complaint or similar demand in the consumer's underlying civil claim or action, the consumer shall file with the court or other tribunal and serve on each opposing party a copy of the executed non-recourse civil litigation advance within fourteen days of execution of the non-recourse civil litigation advance contract. The consumer shall file with the court or other tribunal and serve on each opposing party a copy of any amendments or modifications made to the previously executed non-recourse civil litigation advance.

We ask for this section be stricken as well. What this section does is circumvent the rules of evidence that have been in place in Ohio for decades. This is allowing the other side free discovery of the financial stability of the plaintiff in the case. Under the current rules of evidence if the defense wants to know if a consumer has received financial assistance to put food on their table, they can go through the normal course of discovery process to find that out. That process is available to them today. We respectfully request this body continue with the current rules of discovery and not upend the court system just because Mr. and Mrs. Johnson from Minister, Ohio received $1,500 to pay their electric bill and make a couple of car payments while their claim made its way through the legal system.

As I stated earlier, we are not opposed to the entire bill, in fact we have been trying to come to a positive conclusion for the past year with the other side and hope that we still can. But in its current form SB 94 will eliminate the product from the State of Ohio and its consumers who have been relaying on it since 2008 when the original legislation was passed with zero dissenting votes, and no opposition from any interested parties.

We respectfully request that the sections we have outlined be stricken and the legislature look to pass legislation that in line with what was passed over 14 years ago allowing the citizens of Ohio to have access to a financial tool that will allow them to get a fair and just settlement to their legal claim.

I thank you for this opportunity to address the committee and welcome your comments and questions.