American Tort Reform Association
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March 4, 2025

The Honorable Pamela Beidle
Chair, Senate Finance Committee
3 East Miller Senate Office Building
Annapolis, Maryland 21401

Re: Senate Bill 985: Request for Favorable Report
Hearing, Thursday, March 6, 2024, 1pm

Dear Chair Beidle:

On behalf of the American Tort Reform Association (ATRA), a national coalition of large and small businesses, nonprofits, and trade and professional associations with the mission promoting a fair and predictable civil justice system, we would like to express our support for Senate Bill 985.

The purpose of our civil justice system is to fairly and efficiently resolve disputes between parties. Traditional legal doctrines generally prohibited people or businesses who were not parties to the litigation from funding or having an financial interest in it due to concerns with outsiders meddling in litigation, incentivizing questionable lawsuits, and seeking extortionate settlements. As those doctrines fell to the wayside, and particularly over the past decade or so, we have seen a proliferation of third parties investing 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.

Third party litigation funding (TPLF) primarily comes in two forms. The first is consumer litigation funding, in which lenders offer immediate cash, often with predatory interest rates and fees, to people who are plaintiffs in pending litigation, typically personal injury lawsuits. The money usually goes toward a plaintiff's personal expenses during litigation, not the litigation itself. This form of lawsuit lending is the legal equivalent of the payday loan.[1] Lenders are repaid out of the judgment or settlement. Often, recovery is a sure thing as a consumer is simply awaiting a final settlement and the check to arrive. Experience nationwide shows that these types of loans can come with sky-high interest rates and fees. At payback, a consumer may owe the lender three, five, or even ten times the advanced amount. Aside from raising predatory lending concerns, these arrangements can complicate the ability to reach a reasonable settlement, as the parties (and sometimes the plaintiffs' own lawyer) may be unaware that, after paying the lender and the attorney's contingency fee, there will be little to no money left for the injured party.

A second form of TPLF involves litigation finance firms, hedge funds, institutional investors, and others that provide money primarily to law firms to fund litigating a case or portfolio of cases. In return, much like an attorney operating on a contingency-fee basis, the investor is entitled to a portion of the recovery. Funders back the law firms behind a wide range of litigation—personal injury mass tort cases, IP, antitrust, and other cases. This outside investment in litigation raises the potential for conflicts of interest between funders, attorneys, and clients. While companies that engage in this practice often claim that they

[1] ATRA appreciates that the Maryland Commissioner of Financial Regulation, has, on several occasions, invoked the Maryland Consumer Loan Law and the Interest and Usury law to take action against lenders that have offered lawsuit loans at rates in excess of those allowed by Maryland law. *In the Matter of Plaintiff Funding Holding, Inc. d/b/a LawCash*, No. CFR-FY2014-0052 (July 18, 2016); *In the Matter of National Lawsuit Funding, Inc.*, No. CFR-FY2012-128 (Oct. 4, 2012); *In the Matter of Oasis Legal Finance, LLC,* No. DFR-EU-2008-241, Settlement Agreement and Consent Order (Aug. 6, 2009).

do not influence the litigation or settlement, when such arrangements emerge from the shadows, we have seen funders reject settlements agreed to by the parties as "too low," dictate the choice of counsel, or are otherwise pull the strings. Such situations are ethically problematic, can hurt ordinary people, and are typically hidden. This is a multibillion dollar industry that is projected to double by the end of the decade.

Senate Bill 985 provides needed safeguards for both of these forms of TPLF. First, the bill takes the critical step of providing transparency when a party is relying on TPLF in litigation. Requiring disclosure of litigation financing contracts ensures that all parties are aware that there is an arrangement or outside investor that may be influencing the case and its settlement. It also allows the parties to alert the court if the agreement raises predatory lending concerns or other ethical issues, such as conflicts of interest between funders, lawyers, and clients.

Second, the bill prohibits lenders from engaging in several ethically problematic practices, such as attempting to influence the litigation or settlement, or participating in referral relationships with lawyers and medical providers. It is also our understanding that the bill firmly establishes that a lender may not charge a consumer an interest rate that exceeds Maryland's usury rate. The bill requires litigation financing contracts to include certain information to make consumers aware of how much of their recovery they may ultimately sacrifice in return for what may seem like a small "advance."

Finally, ATRA would support an amendment to the bill providing an additional safeguard by ensuring that a lender cannot take more than 25% of any recovery. This provision would help avoid situations in which the plaintiff's lawyer and lender receive substantially more of the recovery than the actual injured party. Outside parties should not be the primary beneficiaries of litigation.

For these reasons, ATRA respectfully urges the Committee to favorably report Senate Bill 985. Thank you for your consideration.

Sincerely,

Sherman Joyce
President

cc: Members of the Senate Finance Committee