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March 6, 2025

To: The Honorable Pamela Beidle
Chair, Senate Finance Committee

From: Wilson M. Meeks – Consumer Protection Division

Re: Senate Bill 0985– Consumer Protection – Third Party Litigation Financing (SUPPORT WITH AMENDMENTS)

The Consumer Protection Division of the Office of the Attorney General supports with amendments Senate Bill 0985, sponsored by Senator Alonzo T. Washington. Senate Bill 0985 outlines disclosure requirements for third-party litigation financing (“TPLF”) providers but does not make clear that existing licensing and consumer lending laws continue to apply to TPLF loans. Those laws provide important protections for Maryland consumers. With the appropriate amendments, the concerns of the Consumer Protection Division can be addressed.

TPLF is the practice by which a lender invests in litigation by lending a party (usually a plaintiff) money in exchange for an interest in any proceeds that result from the litigation. TPLF generally exists in two formats: commercial and consumer funding. Senate Bill 0985 focuses on consumer funding, *i.e.* funding provided to an individual or class of individuals rather than a commercial entity. Research shows that consumer TPLF providers tend to provide relatively smaller amounts ranging from \$1,000 to \$10,000.¹ Currently, these are loans that are subject to the regulations set forth in Title 12, Subtitle 3—Consumer Loans—Credit Provisions, also known as the Maryland Consumer Lending Laws (“MCLL”), among other subtitles. These should remain subject to the MCLL and usury laws and should not be treated differently than other loans made to Maryland consumers.

¹ *Third-Party Litigation Financing Market Characteristics, Data, and Trends*, UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE (December 2022), at pg. 13.

Senate Bill 0985 attempts to create transparency in the field of TPLF by focusing on disclosure requirements for TPLF contracts. Such transparency is a positive thing that the Division supports. However, the legislation should be clear that existing consumer protections apply to these loans.

First, Senate Bill 0985 should explicitly state that TPLF lenders must be licensed under Md. Code Ann., Fin. Inst. § 11-301 *et seq.* TPLF lenders must be licensed under the current laws, and Senate Bill 0985 should make clear that this requirement continues. *Second*, Senate Bill 0985 should explicitly incorporate the usury caps, definition of interest, interest rates disclosure requirements, and other provisions of Maryland’s consumer lending laws. In this way, consumers can be sure that TPLF lenders are properly calculating, capping and disclosing interest rates to consumers, who can then shop for a potentially better loan. As written, Senate Bill 0985 seems to limit the regulation of TPLF loans to Title 12, Subtitle 1 and exempts TPLF providers from other important consumer protection provisions including, but not limited to, those in Title 12, Subtitles 3 (MCLL), 9, and 10. *Third*, Senate Bill 0985 requires TPLF lenders to include in a TPLF contract disclosure of all “fees” and “charges” but does not include language defining or what constitutes “fees” and “charges.” Senate Bill 0985 should include such definitions. *Fourth*, Senate Bill 0985 should explicitly subject TPLF lenders to Title 12, Subtitles 1 and 3 to ensure that Maryland consumers are protected by these longstanding laws.

TPLF providers market themselves as increasing “access to justice” with little to no risk to consumers since their lending services are contingent and non-recourse—consumers only repay TPLF providers if there is recovery in the litigation. Any argument that these loans should be treated differently than other small loans because they are contingent on a successful recovery in litigation is not strong as the MCLL explicitly covers loans under \$25,000, even if they purport to be contingent and/or non-recourse.

While it is unclear what TPLF lenders typically charge for their loans as it appears to be a guarded secret in the industry, the Consumer Protection Division believes disclosure of the interest rates and any other costs of lending is important for transparency as Senate Bill 0985 purports to create. If the intent of the legislation is to create additional regulation of this industry by creating disclosure requirements, then Senate Bill 0985 should be thorough and clear, referencing all consumer lending and licensing provisions.

Accordingly, for the reasons set forth, the Consumer Protection Division supports Senate Bill 0985 with amendments addressing the concerns set forth herein.

cc. The Honorable Alonzo T. Washington
Members, Senate Finance Committee