ILFA | INTERNATIONAL LEGAL FINANCE ASSOCIATION

HB 1298: Third-Party Litigation Financing – Licensing and Regulation
Maryland House Economic Matters Committee, March 3, 2026

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UNFAVORABLE

Chair Valderrama, Vice Chair Charkoudian, and Members of the Economic Matters Committee, thank you for allowing me to provide written testimony in opposition to HB 1298. My name is William Weisman,[1] and I am testifying on behalf of the International Legal Finance Association ("ILFA"). ILFA is the trade association for the commercial litigation funding industry.

Overview of Commercial Litigation Funding

Commercial litigation funding is distinct from consumer legal funding. It involves non-recourse capital provided to parties and law firms pursuing high-value commercial disputes such as breach of contract, antitrust, and intellectual property matters. Funders are passive investors and do not control litigation strategy or settlement decisions. Recipients are sophisticated entities represented by independent counsel, and individual matters commonly require several million dollars in legal investment.

Commercial litigation funding is beneficial to claimholders ranging from inventors and startups to Fortune 100 companies. In many instances, commercial litigation funding gives smaller parties the resources to pursue valid claims. Countless funded commercial matters are "David vs. Goliath" in nature, in which a smaller party is engaged in litigation against a larger well-resourced company. Without access to this financing, many meritorious claims would not go forward.

Commercial litigation funding also supports Maryland's legal economy by enabling law firms to pursue complex matters, retain experts, and compete with larger adversaries that might otherwise outspend them.

To be clear, commercial funders are purely interested in meritorious cases—cases the legal system should undeniably address. Because these are non-recourse investments, commercial litigation funding providers do not receive any compensation if the case is not successful. Therefore, business necessity dictates that commercial litigation funding firms fund only those cases that have a high likelihood of success, *i.e.*, those with meritorious claims.

Consumer Protection Concerns

HB 1298 states that its intent is to "promote consumer protection and transparency." The commercial legal finance industry does not oppose consumer protection for *consumers*. However, HB 1298 appears to apply consumer-oriented lending frameworks to sophisticated commercial transactions between represented parties. Applying consumer credit statutes to multi-million-dollar commercial litigation investments would create regulatory mismatch, increase compliance costs, and reduce the availability of capital without advancing consumer protection goals.

[1] I am also a Director at Parabellum Capital, an ILFA member. Over nearly a decade in commercial litigation funding, I have worked on dozens investments involving claimholders and law firms nationwide.

Specifically, commercial litigation funding should not be subject to the Maryland Consumer Loan Law. Non-recourse litigation funding investments are not loans because they lack the essential element that defines a loan: an absolute obligation to repay. In a litigation funding transaction, the funder assumes the risk of total loss. The recipient has no repayment obligation if the case is unsuccessful. That risk allocation is the opposite of a loan.

Courts across the country have consistently held that because litigation funding is non-recourse, usury and consumer lending laws do not apply. State legislatures have also codified that litigation funding is a distinct product separate from lending. Applying consumer loan laws to a contingent, non-recourse transaction where the funder, not the consumer, bears the risk of total loss, would mischaracterize the fundamental nature of litigation funding and conflict with the weight of judicial authority nationwide.

Disclosure Concerns

HB 1298 requires the production of funding agreements to opposing parties. Courts already possess the authority to order disclosure when funding information is genuinely relevant, making a categorical statutory mandate unnecessary.

Automatic forced disclosure would disadvantage plaintiffs and their counsel by requiring, among other things, the disclosure of privileged strategic work product and budget information. Critically, this would require disclosure of sensitive information about the case at hand, but also *other unrelated cases that attorneys have financed*.

Disclosure allows opposing parties to weaponize the financing agreement to their advantage, which disadvantages funded parties. There is no need for a special rule for the litigation funding industry and no basis for one litigant to have to disclose their confidential financial arrangements to an opposing party in litigation.

We do not oppose disclosure because we have something to hide. It is because we have something to protect: namely, highly sensitive information that would be ripe for exploitation by defendants. Indeed, defendants regularly seek this very information through document requests, interrogatories, deposition questions, and subpoenas to funders (even potential funders). These new pages in the defense playbook cause unnecessary discovery and motion practice that only add delay and expense—an effective tax on plaintiffs, defendants, and the courts.

Courts have consistently held that the details of litigation funding agreements are irrelevant and protected by work-product and other legal protections, and should not be turned over to opposing parties in litigation. In addition, in the vast majority of cases, funding agreements have been deemed irrelevant to the case's underlying claims and defenses. Courts across jurisdictions have repeatedly found that litigation funding agreements are not relevant to pending cases.[2] And when they are relevant (such as in certain patent cases), courts already have the inherent authority to disclose some, or all, of the agreement, depending on the facts of a particular case. Furthermore, even when disclosure occurs, courts routinely hold that funding-related materials are inadmissible at trial.

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[2] *See In re Hair Relaxer Mktg. Sales Pracs. & Prods. Liab. Litig.*, 2024 U.S. Dist. LEXIS 88186, at * 590-91(N.D. Ill., Apr. 9, 2024).

The bill's automatic disclosure provisions would unfairly prejudice funded parties and counsel, and undermine work-product protections. They would also lead to unnecessary satellite litigation regarding litigation funding, increasing legal costs for all parties and needlessly congesting the courts. As a result, funders would be deterred from financing disputes in Maryland, reducing competition to the detriment of claimholders.

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Commercial litigation funding contributes to a fairer legal system. There is no evidence that commercial litigation funding has caused harm in Maryland that would justify the misaligned regulatory approach proposed in HB 1298. If passed, HB 1298 would burden courts and deprive Maryland claimholders and law firms of critical capital.

ILFA is committed to working with legislators on a regulatory framework that serves Maryland's interests while preserving access to funding for meritorious claims. Please consider ILFA a resource as you continue these discussions.

Respectfully,

/s/ William H. Weisman

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