

**Written Testimony
Before the Maryland House Economic Matters Committee
Regarding HB 1298**

Third-Party Litigation Financing – Licensing and Regulation

Chair Valderrama, Vice Chair Charkoudian Members of the Committee:

Testimony in opposition

My name is Eric Schuller, and I serve as President of the Alliance for Responsible Consumer Legal Funding, ARC. ARC represents companies that provide non-recourse consumer legal funding to injured individuals who are waiting for their legal claims to resolve.

Thank you for the opportunity to appear before you today regarding HB 1298.

Our members operate with a shared commitment to transparency, responsible practices, and meaningful consumer protections. We believe strongly that regulation, when carefully crafted, can strengthen the marketplace and protect Maryland residents. However, it is equally important that legislation accurately reflects the nature of the product being regulated and does not unintentionally harm the consumers it seeks to protect.

I am here today to share our concerns with the bill as drafted and to offer a path forward that preserves consumer access to non-recourse funding while ensuring appropriate safeguards within Maryland's legal system.

I. The Bill Creates One-Sided Transparency That Favors Insurers

Under current Maryland practice, insurance policy limits are not automatically disclosed simply because a legal claim exists. Disclosure typically occurs through formal discovery or a structured statutory request.

HB 1298, however, requires automatic disclosure of litigation financing contracts to all parties and insurers, even before litigation formally begins.

This creates a fundamental imbalance:

- Plaintiffs must immediately disclose private financial arrangements.
- Insurers are not required to automatically disclose policy limits.
- Insurers gain early insight into a plaintiff's financial vulnerability.

This asymmetrical transparency provides insurers with strategic leverage in negotiations. When a defendant or insurer knows a plaintiff has sought financial support, it signals potential financial pressure. That information can be used to delay, discount, or strategically negotiate settlements.

Requiring disclosure of a consumer's litigation funding agreement is akin to requiring a plaintiff to disclose a personal bank statement at the outset of litigation. It exposes financial hardship that is unrelated to liability or damages, and it shifts leverage away from injured Maryland residents.

II. The Bill Conflates Consumer and Commercial Litigation Finance

HB 1298 sweeps together two fundamentally different markets under one regulatory framework.

Consumer Legal Funding:

- Small-dollar, non-recourse funding.
- Provided directly to injured individuals.
- Used for rent, food, utilities, and day-to-day expenses.
- Repayment only if the consumer recovers.

Commercial Litigation Finance:

- Multimillion-dollar portfolio investments.
- Institutional capital backing.
- Business-to-business transactions.
- Sophisticated corporate parties.

These markets differ in size, structure, sophistication, and risk profile. Regulating small-dollar consumer transactions based on concerns associated with institutional commercial investment risks overcorrection.

Consumer legal funding is not hedge-fund portfolio financing. It is a financial bridge for individuals who cannot work because of injury and are waiting months or years for resolution of their claims.

Conflating the two invites regulatory measures that may be appropriate for institutional investors but are disproportionate when applied to injured consumers.

III. The Bill Misclassifies a Non-Recourse Product as a Loan

HB 1298 classifies litigation financing as a loan subject to Maryland lending laws.

Consumer legal funding, however, is non-recourse.

Repayment occurs only if the consumer recovers. If the case is lost, the consumer owes nothing. There is no guaranteed repayment obligation. That fundamental characteristic distinguishes it from traditional credit.

A loan requires repayment regardless of outcome. Consumer legal funding does not.

If classified as a loan and subjected to lending rate caps designed for traditional credit products, the likely result is market exit by responsible providers. The risk-based pricing that reflects the contingent nature of repayment cannot operate under lending frameworks designed for guaranteed repayment obligations.

The practical consequences would include:

- Responsible providers leaving the Maryland market.
- Consumers losing access to non-recourse financial support.
- Increased financial pressure on injured individuals.
- Earlier, lower settlements driven by necessity rather than merit.

In effect, reclassification could eliminate the product.

IV. The Real-World Impact on Maryland Consumers

Consumer legal funding is often used by individuals who:

- Cannot work due to injury.
- Face mounting medical and household expenses.
- Are waiting extended periods for case resolution.
- Have limited access to traditional credit.

Without financial support, economic hardship can dictate legal outcomes. Financial pressure may force premature settlements at discounted values, benefiting insurers rather than injured individuals.

Access to non-recourse funding helps stabilize plaintiffs so they can allow their cases to resolve on the merits.

Conclusion

Well-intended regulations should protect consumers without stripping them of lawful financial options.

HB 1298, as drafted:

- Imposes automatic, one-sided disclosure.
- Conflates consumer and commercial litigation finance.
- Misclassifies a non-recourse product as a loan.

These provisions risk handing strategic advantage to insurers, eliminating access to a lawful financial tool, and reducing access to justice for financially vulnerable Maryland residents.

The Alliance for Responsible Consumer Legal Funding respectfully stands ready to work with members of this Committee, stakeholders, and other interested parties to develop thoughtful, balanced legislation that protects consumers, preserves the integrity of the legal system, and allows responsible companies to continue operating in Maryland. We believe these goals are not mutually exclusive and can be achieved through careful, collaborative policymaking.

Thank you for your time and consideration.

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