

MARYLAND EMPLOYERS FOR CIVIL JUSTICE REFORM COALITION

SUPPORTS SB 894

Third-Party Litigation Financing – Licensing and Regulation

Maryland Employers for Civil Justice Reform Coalition, comprised of many of the largest employers, businesses, and health care providers in Maryland, supports SB 894. The bill takes a simple but effective approach to provide consumer protection for plaintiffs in civil lawsuits and contractual transparency for defendants. That approach is to license, regulate, and establish disclosure requirements for third-party litigation financing (TPLF).

The primary provision in the legislation is licensure. An entity that is financing a litigation under the clear definitions set forth in the bill cannot do so unless it is licensed under Subtitle 2 or 3 of Title 11 of the Financial Institutions Article. This means that the litigation financier must be licensed under the Consumer Loans Licensing Provisions or the Installment Loans Licensing Provisions of Maryland law. This is consistent with the bill's further provision that all litigation financing is to be considered a loan, subject to all of the consumer protections and safeguards in Maryland's Commercial Law Article.

A significant further feature of SB 894 requires that a party in a civil action must provide -- to all other parties and each insurer defending other parties in the civil action -- a copy of the litigation financing contract (including any updated contracts) in effect. This common-sense provision will provide full disclosure to defendants and all parties. In addition, the bill sets forth the permissible subjects of discovery in any civil action for which there is a litigation financing in place. These provisions and safeguards afford material and much-needed protections for all parties who enter into these contracts.

Notably, other than licensure and disclosure, which are grounded in common sense to give fair notice to all interested parties, there are no other requirements on litigation financiers. If any further requirements are found to be needed, those and other refinements are to be promulgated under regulations to be implemented by the Commissioner of Financial Regulation. Contrary to what some opponents might contend, SB 894 is by no means prescriptive or limiting to litigation financiers, plaintiffs, or plaintiff lawyers.

TPLF's defenders often portray this practice as a benevolent business model aimed at increasing access to justice. After years of TPLF activity, it is now apparent that such a rationale is an utterly false narrative. The claim that TPLF provides financial support to plaintiffs who might otherwise be unable to pursue their claims is simply false, as our current system already allows plaintiffs' lawyers to work on a contingency fee basis, and the American rule against fee shifting has long protected plaintiffs from bearing the costs of losing claims. TPLF is primarily a profit-driven enterprise designed to maximize returns for investors, often at the expense of the plaintiffs it purports to help. Requiring licensing, regulation, and disclosure of these activities is a minimal, measured, and overdue public policy that will ensure protection of consumers and all interested parties to a civil litigation claim.

For all these reasons, the Coalition urges a favorable report on SB 894.

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