

SB 175 #1

What is Consumer Legal Funding?

Unlike Third Party Litigation Financing, Consumer Legal Funding focuses on supporting the individual directly, not the litigation process itself.

- * The average funding amount is \$3000-\$5000
- * Funds are non-secured
- * If the consumer loses their case, or is not awarded enough to repay, they owe nothing.
- * The funds are specified to be used **ONLY** for daily living expenses such as rent, car payment, house payment, groceries, medical expenses, etc. They are forbidden to be used for legal expenses of any kind.

SO WHY DO WE HAVE A PROBLEM WITH SB 175? 22 WORDS

(8) "Litigation financing," the financing, funding, advancing, or loaning of money to
7 pay for fees, costs, expenses, or any other sums arising from or in any manner
8 related to a civil action, administrative proceeding, claim, or cause of action, if the
9 financing, funding, advancing, or loaning of money is provided by any person other
10 than a person who is:
11 (a) A party to the civil action, administrative proceeding, claim, or cause of
12 action;
13 (b) A legal representative engaged, directly or indirectly through another legal
14 representative, to represent a party in the civil action, administrative
15 proceeding, claim, or cause of action; or
16 (c) An entity or insurer with a preexisting contractual obligation to indemnify
17 or defend a party to the civil action, administrative proceeding, claim, or
18 cause of action;

THIS BILL EXPRESSLY TARGETS LITIGATION FINANCING. THERE IS NO MENTION OF CONSUMER LEGAL FUNDING. EVEN SO...

THE DEFINITION OF LITIGATION FINANCING PROPOSED IN SB 175, VIA THE EXTREMELY BROAD LANGUAGE IN THOSE 22 WORDS, MERGES THE ACTIVITY OF CONSUMER LEGAL FUNDING INTO THE DEFINITION OF LITIGATION FINANCING.

States that have enacted legislation on Consumer Legal Funding

Maine

2007

- * No rate restriction
- * Requires license
- * Notice and disclosure of the terms of contract laid out for the consumer.
- * Available in French and Spanish
- * Arbitration in the contract is prohibited
- * Prohibits involvement in the case

Ohio

2008

- * No rate restriction
- * Notice and disclosure of the terms of the contract laid out for the consumer.
- * No license or registration required
- * Prohibits involvement in the case

Nebraska

2010

- * No rate restriction
- * Caps fees at 36 Months
- * Notice and disclosure of the terms of the contract laid out for the consumer.
- * Registration with the Secretary of State required
- * Prohibits involvement in the case
- * Attorney Client privilege extends to the funding company

Oklahoma

2013

- * No rate restriction
- * Caps fees at 36 Months
- * Notice and disclosure of the terms of the contract laid out for the consumer.
- * Registration with the Department of Consumer Credit required
- * Prohibits involvement in the case

Tennessee

2014

- * Caps rates at \$360 per \$1000 funded and 10% Servicing fee of the funded amount
- * Caps fees at 36 Months
- * Notice and disclosure of the terms of the contract laid out for the consumer.
- * Registration with the Secretary of State required
- * Prohibits involvement in the case

Arkansas

2015

- * Caps rates at 17%
- * Industry does not operate in the state.

Indiana
2016/2023

- * Caps rates at 36% plus a 7% servicing fee plus \$500 documentation fee per claim
- * Caps fees at 36 Months
- * Notice and disclosure of the terms of the contract laid out for the consumer.
- * License with Department of Financial Regulation

- * Prohibits involvement in the case
- * Attorney Client privilege extends to the funding company
- * In 2023 requirement disclosure of the existence of the contract if requested was added

Vermont
2016

- * No rate restriction
- * Caps fees at 36 Months
- * Notice and disclosure of the terms of the contract laid out for the consumer.
- * Requires License with the Department of Financial Regulation
- * Prohibits involvement in the case
- * Attorney Client privilege extends to the funding company

Wisconsin
2018

- * Requires disclosure of terms of the contract to interested parties

West Virginia
2019

- * Caps rates at 18%
- * Notice and disclosure of the terms of the contract laid out for the consumer.
- * Registration with the Secretary of State required
- * Prohibits involvement in the case
- * Industry does not operate in the state.

Nevada
2019

- * Caps rates at 40% Plus a one-time \$500 Documentation Fee Per Legal Claim
- * Caps fees at 36 Months
- * Notice and disclosure of the terms of the contract laid out for the consumer.
- * License with the Department of Financial Services
- * Prohibits involvement in the case
- * Attorney Client privilege extends to the funding company

Utah
2020

- * No rate restriction
- * Notice and disclosure of the terms of the contract laid out for the consumer.
- * Registration with the Department of Consumer Protection required
- * Prohibits involvement in the case

Illinois

2022

- * Caps rates at 18% every 6 months plus a one-time \$75 Documentation Fee.
- * Caps fees at 42 Months
- * Notice and disclosure of the terms of the contract laid out for the consumer.
- * License with the Illinois Department of Financial Regulation required
- * Prohibits involvement in the case
- * Attorney Client privilege extends to the funding company

Missouri

2023

- * No rate restriction
- * Notice and disclosure of the terms of the contract laid out for the consumer.
- * License with the Department of Finance required
- * Prohibits involvement in the case
- * Attorney Client privilege extends to the funding company

Montana

2024

- * Caps rates at 15% or 25% of the settlement, which is less
- * Notice and disclosure of the terms of the contract laid out for the consumer
- * Require disclosure of the contract to interested parties
- * Require registration with the Secretary of State
- * Industry does not operate in the state.

Washington State

2024

- * Product exempt from Loan Statute

States where the Courts have deemed Consumer Legal Funding not a Loan or Advance

- * Minnesota
- * Michigan
- * Texas
- * Georgia
- * Florida
- * New York
- * Wisconsin
- * New Jersey

State where companies operate under an Attorney General Agreement

- * New York

States where the AG has stated the product is not subject to the Loan Statute

Virginia

- * **12 STATES ACKNOWLEDGE CONSUMER LEGAL FUNDING IS NOT LITIGATION FINANCING.**

- * **10 STATES RECOGNIZE THAT CONSUMER LEGAL FUNDING IS NOT A LOAN**

THE ALLIANCE FOR RESPONSIBLE CONSUMER LEGAL FUNDING IS NOT OPPOSED TO BEING REGULATED. JUST REGULATE IT APPROPRIATELY AS A UNIQUE ACTIVITY.

NORTH DAKOTA HB 1372
2025

THEIR DEFINITION OF LITIGATION FINANCING

"Litigation financing" means the financing, funding, or advancing of money to pay for expenses or any other sums arising from a civil action, claim, or cause of action, if the financing, funding, or advancing of money is provided by any person other than a person that is:

- a. A party to the civil action, claim, or cause of action;
- b. A legal representative engaged, directly or indirectly, through another legal representative, to represent a party in the civil action, claim, or cause of action; or
- c. An entity or insurer with a pre-existing contractual obligation to indemnify or defend a party to the civil action, claim, or cause of action.

ON FEBRUARY 19, THE NORTH DAKOTA HOUSE VOTED 91-1 TO DEFEAT HB 1372