American Property Casualty Insurance Association

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March 11, 2025

Representative Robert E. Craven, Sr.
Chair, House Committee On Judiciary
Rhode Island State House
Providence, RI 02903

Re: House 5907 – An Act Relating To Courts And Civil Procedure – Procedure Generally – Litigation Lending Agreements

Dear Chair Craven:

This statement in support of House 5907 is submitted by the American Property Casualty Insurance Association (APCIA).[1] House 5907 would subject litigation financing agreements to the state usury loan law and its cap of 21% interest.

Third-party litigation financing (TPLF) is the relatively recent phenomenon of external entities (hedge funds, etc.) financing civil legal actions on behalf of plaintiffs, in exchange for a percentage of the plaintiff's recovery. In essence, these private finance firms turn the judicial system into an investment market as an otherwise uninterested party is betting on the outcome of litigation for prospective profit.

Litigation lenders claim that because they label their loans "non-recourse," that they are instead providing financing agreements. That is likely inaccurate. According to a 2024 Consumer Financial Protection Bureau (CFPB) interpretive ruling[2] supported by Rhode Island Attorney General Peter Neronha,[3] "credit" under the Truth in Lending Act (TILA, 15 U.S.C. 1601 et seq.) and Regulation Z is "the right to defer payment of debt or to incur debt and defer its payment and "debt" under those rules "includes any obligation by a consumer to pay another party." Rhode Island state law has very similar definitions.[4]

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[1] Representing nearly 65% of the U.S. property casualty insurance market, APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe. Several APCIA members are located in Rhode Island and many more do business here. Together, APCIA members write almost 68.5% of the commercial insurance sold in the state.

[2] https://files.consumerfinance.gov/f/documents/cfpb_paycheck-advance-marketplace_proposed-interpretive-rule_2024-07.pdf

[3] https://www.mass.gov/doc/aug-2024-comment-letter-cfpb-proposed-interpretive-rule-earned-wage-access/download

[4] R.I. Gen. Laws § 19-14.9-3:

(3) "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but the term shall not include a person to the extent that he/she receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of the debt.

(4) "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services that are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment.

Using those definitions, TPLF's so-called "financing agreements" are clearly loans that extend credit and create debt.

Multiple states, including Maryland [5] and West Virginia[6] regulate third party litigation financing under their consumer lending statutes, including requiring TPLF to be subject to the state's usury interest rate. New York trial court in a strict liability labor case found "low, if any risk" of the litigation funder not recovering and thought it "ludicrous to consider this transaction anything else but a loan."44 In North Carolina, a state court of appeals found that a TPLF agreement was an investment but concluded that the investment constituted a "cash advance" subject to the state's usury law.

Third-party litigation financing agreements should, as H.5907 proposes, properly be recognized as loans, providing consumers with up-front funds that they will be obligated to repay when their case ends. TPLF and its use of supposed "non-recourse" lending to avoid conventional disclosure and oversight of lenders is merely a new twist on a very old theme -- third parties seeking to profit off claimants' injuries. Invest, fund, and build up damages that would otherwise not exist so that the financer can profit. This is not a victimless act. All policyholders pay for these efforts in their insurance premiums.

In sum, APCIA supports both H.5907 and H.5221 as different approaches to handle the same problem. The former regulates TPLF as a loan and the latter subjects its practitioners to registration and disclosure.

APCIA stands ready to assist the committee on this issue and appreciates the opportunity to provide these comments.

Very truly yours,

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RI Gen Laws § 6-27-3.
"Credit" means any … advance… any conditional sales contract… any option, demand, lien, pledge, or other claim against or for the delivery of property or money….

[5] Md. Code Fin. Inst. Art. §11-201 et seq. and Md. Code Com. Law. Art. §12-301 et seq.

[6] https://www.wvlegislature.gov/Bill_Text_HTML/2024_SESSIONS/RS/bills/sb850%20sub1.pdf