



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

Assembly Bill 464

Assembly Committee on Consumer Protection

October 11, 2023

Chair Callahan and fellow members of the Assembly Committee on Consumer Protection: thank you for hearing this bill today. The bill before you is Assembly Bill 464 (AB 464) relating to: nonrecourse civil litigation advances and providing a penalty.

Nonrecourse civil litigation advance transactions involve a company providing a cash payment to a consumer involved in a legal dispute in exchange for a portion of the proceeds from any settlement, judgment, or award related to the dispute. This bill provides some reasonable regulations so plaintiffs in Wisconsin do not fall victim to such practices. This bill does not seek to eliminate the industry or all of its practices; rather, the bill seeks to make some modest regulations. The bill would cap the interest rate on such transactions at the prime interest rate plus 10 percent. This bill would also limit the terms of repayment to no more than 36 months. Much of what is incorporated in this bill has been adopted in similar legislation in a variety of states.

If a company violates these regulations, it may face civil forfeiture penalties ranging from \$25 to \$5,000, unless it can prove the violation was an unintentional error.

In summary, Assembly Bill 464 aims to protect consumers involved in legal disputes by regulating nonrecourse civil litigation advance transactions, ensuring transparency, fair terms, and preventing excessive charges and commissions. Violations of these regulations may result in penalties for the companies involved.

I, personally, have seen firsthand individuals who have fallen victim to such lending practices. A client of mine took \$500 to pay some bills while her case made its way through the courts. When all was said and done, she ended up having to pay over \$2,400 – that is almost a 500% increase for the cost of the cash. That is unacceptable! Please join me and support making reasonable regulations to this industry.

Thank you again, member of the Assembly Committee on Consumer Protections for hearing my testimony.



STATE SENATOR
Eric Wimberger
DISTRICT 30

State Senator Eric Wimberger
Assembly Committee on Consumer Protection
Re: nonrecourse civil litigation advances and providing a penalty
October 11, 2023

Thank you Mr. Chair and committee members for holding a hearing on Assembly Bill 464, which takes important steps in protecting consumers who use a civil litigation advance.

A nonrecourse civil litigation advance transaction provides advance money to a plaintiff, with repayment coming from the proceeds of settlement or judgements of the legal dispute. While this can be a helpful service for some consumers, terms of civil litigation advances can be unfair and confusing, causing a plaintiff to pay excessively high fees and interest rates and leaving little or no financial recovery after a successful suit.

Assembly Bill 464 puts commonsense limitations on these advances while creating important protections for consumers. The bill increases transparency by requiring contracts be in writing, and specifies that certain terms must be included so consumers can more easily understand the agreement. The bill puts a cap on financing fees and the interest rate that can be charged. It also requires that consumers can pay back an advance in full at any time and ensures that consumers will only have to pay back the advance from the proceeds of the lawsuit.

Adopting these simple regulations places needed limits on civil litigation advances and ensures that consumers who use these services aren't taken advantage of. Thank you again for holding this hearing and I hope you'll join us in support of Assembly Bill 464.

2-14-22

I am Linda Trasee,
from Appleton, Wisconsin.
I am a senior citizen and
I don't have a lot of money.

I applied for a loan
from Oasis Lien. I had
an accident and I ran out
of money and that is the reason
why I took the loan out.
But prior to my signing the
loan documents, I was not
informed of the penalties
or interest rates. I don't
believe I was even told as
to how long this would take
to pay back. They never told
me if I could pay it off sooner.
I am not impressed with them.
The penalties caused me
harm because when I actually
had to pay them back, I

had to pay 2,415.00 for only
a 500.00 loan. If that
isn't a hardship, I don't
know what is. This is a
4.83%, which is a very high
amount of interest. This is
a terrible thing to do to a
senior citizen. If I would
have known more information,
I would not have done this.

Sincerely,

Kinda Dasee



**Statement Before the
Assembly Committee on Consumer Protection**

By

**Bill G. Smith
State Director
National Federation of Independent Business
Wisconsin**

Wednesday, October 11, 2023

Assembly Bill 464

Mr. Chair and members of the Committee, first thank you for scheduling today's hearing for Assembly Bill 464, relating to a practice known as nonrecourse civil litigation advances.

My name is Bill G. Smith, State Director for the National Federation of Independent Business (NFIB), and President of the Wisconsin Civil Justice Council.

As State Director of NFIB, I am pleased to represent over 10,000 small and independent business owners located all across Wisconsin. For over eighty years, NFIB has been a leading advocate for our small business community, promoting state and federal public policies that will encourage small business creation, and promote small business growth in communities throughout our state. Civil justice reform is one of those policy areas that has been a key issue, and one strongly endorsed by small business.

Founded in 1980's, the mission of the Wisconsin Civil Justice Council is to promote fairness, and equity in Wisconsin's civil justice system, with the ultimate goal of making Wisconsin a better place to work, to start and grow a business, and to improve the quality of life throughout our state.

While I serve as President of the Council, Scott Manley, WMC, is our Vice President, Brad Boycks, Wisconsin Builders Association is the Secretary, Andy Franken, Wisconsin Insurance Alliance, is our Treasurer, and R.J. Pirlot, of the Hamilton Group, serves as our Executive Director. Mr. Pirlot had a scheduling conflict, so he is unable to attend today's hearing, but he has asked that I distribute his statement on behalf of the Civil Justice Council.

**National Federation of Independent Business in Wisconsin
10 East Doty Street, Suite 519 – Madison, WI 53703 - 608/255-6083 – www.nfib.com/wi**

Statement Before Assembly Committee on Consumer Protection - continued

October 11, 2023

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The WCJC's legislative policies are set by consensus by our Board of Directors which includes representatives from Wisconsin's leading business and professional organizations.

Again, we thank you for today's hearing and for the opportunity to convey the Council's support for passage of Assembly Bill 464.

I am pleased to introduce Evan Umpir, WMC Director of Tax, Transportation and Legal Affairs, who will share some comments relating to the nonrecourse civil litigation funding proposal, Assembly Bill 464.



TO: Members, Assembly Committee on Consumer Protection

FROM: Evan Umpir, Director of Tax, Transportation, and Legal Affairs

DATE: October 11, 2023

RE: Support for AB 464, Relating to: nonrecourse civil litigation advances and providing a penalty.

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to testify in **support of Assembly Bill (AB) 464** and thanks Representative Tusler and Senator Wimberger for introducing this bill again this session. WMC supports this proposal as it will **codify common-sense consumer protections and promote the natural administration of justice.**

WMC is the largest general business association in Wisconsin, representing approximately 3,800 member companies of all sizes, and from every sector of the economy. Since 1911, our mission has been to make Wisconsin the most competitive state in the nation to do business. As part of that mission WMC supports legislation, like AB 464, that seeks to ensure a properly functioning court system to ensure the proper administration of justice.

The bill before you today seeks to bring common-sense consumer protections to a currently unregulated industry in Wisconsin. Under current law, “non-recourse civil litigation financing,” also known as “consumer litigation,” “consumer legal,” or “pre-settlement” funding, lawsuit “lending” or “financing,” or other synonyms, **is not regulated like other consumer transactions and lending in Chapters 421-429 of the Wisconsin Statutes (Wisconsin Consumer Act),** first enacted in 1972. AB 464 adds these regulations to the state’s marketing and trade practices statutes in Chapter 100. Simply, litigation advance payments are a financial transaction where the financier provides money, often a small amount – usually a few thousand dollars – to the plaintiff in a lawsuit for non-litigation expenses, such as rent or mortgage, food, bills, or other expenses.¹ **These payments are not used to pay attorney fees and in no way affects a plaintiff’s ability to pursue a claim in court;** plaintiffs’ attorneys typically operate on a contingent basis and only get paid if the case wins or settles. If the plaintiff receives a judgment or settlement upon resolution of the case, only then must a plaintiff repay the payment, with interest (or accrued charges).

Unregulated Advance Litigation Payment Transactions Can Harm Consumers

This arrangement, though, can cause issues for plaintiffs and prevent the legal system from functioning properly. Often times these advance payments have **prohibitively high finance charges that, when calculated as an equivalent to an interest rate, can quickly compound and approach 200% annually.**² Consumers who took what otherwise would have been a relatively

¹ See e.g. *Consumer vs. Commercial Legal Finance*, American Legal Finance Association (2019), available at: <https://americanlegalfin.com/wp-content/uploads/2019/06/Commercial-Litigation-Financing-Vs-Consumer-Legal-Funding.pdf> (“The average advance is just \$5,000 . . .”) (on file with author); “FAQ: How much legal funding can a person receive?” Alliance For Responsible Consumer Legal Funding, available at: <http://arclegalfunding.org/faq/#toggle-id-2> (“\$2,000 is the average funding for ARC provider members.”).

² Jean Xiao, *Heuristics, Biases, and Consumer Litigation Funding at the Bargaining Table*, 68 *Vanderbilt Law Review* 261, 265 (2015), available at: <https://scholarship.law.vanderbilt.edu/vlr/vol68/iss1/7>.

small, stopgap-type payment for certain expenses until a judgement or settlement from their lawsuit was paid, then owes well more than what was initially borrowed. **Repayment of the advance payment can severely diminish, if not wipeout any financial judgment or settlement the plaintiff was entitled to from the litigation.**

Artificial Considerations Such As Financial Pressure Disrupt the Administration of Justice

Additionally, the effect of swelling interest charges can affect a plaintiff's decision about whether to settle or protract litigation hoping for a larger settlement offer or judgment. **Protracted, artificially extended litigation due to financial pressures distorts the justice system and affects defendants and the justice system as a whole.** Tort litigation aims to make an injured party whole, often through a financial judgement. The pressure to repay a lawsuit advance payment, plus growing finance charges, may unduly incentivize plaintiffs to extend litigation in order to obtain a larger financial settlement or judgment. Some financiers even encourage extending litigation to obtain a larger financial settlement or judgment. For example, Thrivest Link, a Pennsylvania-based company offering "non-recourse pre-settlement funding" to individuals in Wisconsin says in its Legal Funding Guide, "[d]on't settle for a low ball offer," explaining these transactions allows plaintiffs to "hold out longer."³ Indeed, it may be prudent for plaintiffs in some cases to reject a settlement and wait for another offer or go to trial, but **litigation strategy decisions should be between a client and their attorney made with a clear mind based on the merits of the claim and without the pressure of the need to repay an advance payment with growing, exorbitant charges.**

Not only can litigation advance payments financially affect plaintiffs, it also directly affects defendants and the justice system as a whole. **Precious court resources, most importantly docket time, are wasted** when plaintiffs artificially extend litigation. Before the COVID-19 pandemic, courts were stretched thin handling the volume of cases working their way through the justice system and these pressures were only exacerbated by the pandemic with little ease since. Not only do these cases affect the court and other cases by remaining on the docket, but the **must devote additional resources to defending against the claim, even if the defendant has made a reasonable and fair offer to settle the case.**

Our adversarial justice system encourages the zealous adjudication of claims to ensure justice is served; but the financial weight on plaintiffs and costs to defendants and the court system interfere with the proper functioning of justice.

AB 464 Institutes Common-Sense Consumer Protections That Allow Litigation Advances

Despite the potential negative effects on plaintiffs, defendants, and the justice system, litigation advances can help meet legitimate, immediate needs of consumer-plaintiffs. **AB 464 provides guardrails to ensure that plaintiffs are not exploited while still allowing the industry to operate in Wisconsin.** The common-sense consumer protections in the bill include:

1. Capping finance charges at no greater than the prime interest rate plus 10%.⁴

³ *Legal Funding Guide: A Reference Guide for Plaintiffs*, Thrivest Link, available at: <http://thrivestlink.com/wp-content/uploads/2020/02/Thrivest-Link-Legal-Funding-Guide-1.pdf>.

⁴ This rate would be 18.5% as of today. See "Selected Interest Rates (Daily) - H.15," Board of Governors of the Federal Reserve System, available at: <https://www.federalreserve.gov/releases/h15/>.

Other states have similar interest rate caps, such as Arkansas, whose constitutional maximum interest rate for loans or contracts is 17%.⁵ Other states imposing caps on litigation advance payments interest equivalents range from 18% to 40%.⁶

2. Ensuring consumers are not required to pay back the advance payment if the case is not won nor pay beyond available proceeds from a settlement or judgment.
3. Ensuring the right to pre-pay the balance and entitling the consumer to prorated finance charges.
4. Requiring a financier state it has no right to, and will not, make any decisions with respect to the litigation and affirming that right lies with the consumer and consumer's attorney.
5. Allowing the consumer to cancel the agreement within five business days.
6. Fixing the term of the contract at three years (36 months).
7. Prohibiting the payment of referral fees to attorneys or healthcare providers by the financier.
8. Requiring a written agreement containing certain information about the advance payment, including the total amount of money owed by the consumer and all one-time fees.

These reasonable requirements will promote transparency for, and protect, plaintiffs seeking to obtain these advance payments. In fact, the American Legal Finance Association, “adheres to and promotes the highest ethical standards and levels of conduct,” and includes in its standards and code of conduct the requirements relating to decision-making about the litigation and attorney referral fees.⁷

Litigation advance payments may help plaintiffs with immediate costs until their cases are resolved. Unfortunately, as seen across the country and now in Wisconsin, litigation advance payments can leave consumers in a difficult financial position, costs courts and defendants time and money, and disrupts the natural administration of justice. AB 464 institutes reasonable consumer protections, including some industry best practices, which will maintain these transactions as an option for consumers who need it while keeping those consumers protected and fortifying the integrity and administration of justice.

Thank you for your time and consideration.

⁵ Ark. Const. Amendment 89, § 3.

⁶ Indiana (36%), Ind. Code Ann. § 24-12-1-0.5 et seq; Nevada (40%), Nev. Rev. Stat. §§ 604C.010 et seq; Oklahoma (no limit), Okla. Stat. tit. 14A, §§ 3-801 et seq., Tennessee (36%), Tenn. Code Ann. §§ 47-16-101 et seq.; Vermont (no limit), 8 Vt. Stat. Ann. §§ 2251-2260; West Virginia (18%), W. Va. Code Ann. § 46A-6N-6.

⁷ American Legal Finance Association, available at: <https://www.americanlegalfin.com/consumers/#standards>.



Wisconsin Defense Counsel

Defending Individuals And Businesses In Civil Litigation

To: Members, Assembly Committee on Consumer Protection
From: Adam Jordahl, Wisconsin Defense Counsel (WDC)
Date: October 11, 2023
Subject: Support for Assembly Bill 464

Chairman Callahan and Members of the Committee:

Thank you for the opportunity to submit testimony on Assembly Bill 464. My name is Adam Jordahl and I represent the Wisconsin Defense Counsel, a statewide organization of attorneys dedicated to the defense of Wisconsin citizens and businesses and the maintenance of an equitable civil justice system. WDC members represent individuals, employers, and insurers in a variety of civil legal disputes.

WDC supports AB 464 because it creates reasonable consumer protections around nonrecourse civil litigation advance transactions. By capping the total finance charge, requiring clear written contracts with specific provisions, and prohibiting advance companies from interfering with the legal process, AB 464 will help to protect consumers who need these advances while ensuring that claims are resolved in an equitable and timely manner.

Litigation advances can provide plaintiffs a means to sustain themselves financially while litigation progresses. However, these transactions are almost entirely unregulated in Wisconsin. WDC attorneys have reported cases in which a plaintiff refused to settle because most or all of the settlement would have gone towards repaying the advance.

Last year, WDC member attorney Steven Snedeker testified about his experiences with these advances before this committee. He recounted a lawsuit he defended in which the plaintiff, whose case was not certain to prevail, had taken out a large advance. The size and terms of the advance made it impossible to reach a settlement with the plaintiff, such that the case was litigated up to the appellate level before the plaintiff ultimately lost.

Even though the plaintiff did not have to repay the advance because his case was not successful, it nevertheless created significant costs for other actors in the legal system. When cases that could be settled are prolonged needlessly, it consumes the limited time and resources of the courts, as well as attorneys, insurers, and other professionals. It also contributes to a general inflation of the cost of legal services.

Mr. Snedeker has also seen litigation advances work as intended, as when he represented a plaintiff who needed to pay bills while his lawsuit was resolved. Mr. Snedeker connected his client with a local firm run by retired Wisconsin attorneys who reviewed the case and offered a finance charge comparable to an average credit card at the time. Nothing in AB 464 would prevent litigants from obtaining reasonable advances from responsible sources.

Litigation advances often have confusing terms and very high finance charges, meaning that even those with successful cases may be on the hook for several times the original advance. A study from the University of Texas and the Cardozo Law School examined 225,000 requests for funding made to a large litigation financing firm, and the researchers concluded that the advances are typically profitable for the financier but a bad deal for consumers. While the average amount advanced to consumers in motor vehicle cases was \$5,227, the average amount due for repayment was \$13,515. The median amount advanced was \$2,000, with a median amount due of \$3,961.¹

AB 464 would protect Wisconsin consumers by capping the total finance charge and requiring companies to clearly disclose the terms of the agreement.

In a particularly egregious situation, a journalist reported in 2019 on documents that outlined a network of financiers, plaintiff's attorneys, and doctors in Georgia that regularly collaborated to inflate claims against insurers after trucking accidents. A medical clinic billed claims at 2.5 to 3.5 times the average market rate and then presented bundled cases to finance companies, who in turn advanced payments to doctors. In one year, the clinic and financiers worked together to bundle 700 cases with each claim standing to make \$100,000, or \$70 million total.²

AB 464 would prevent such a situation from ever arising in Wisconsin by prohibiting companies that issue litigation advances from making any litigation-related decisions and from paying commissions or referral fees to attorneys or health care providers.

For the foregoing reasons, we respectfully request that you support Assembly Bill 464.

For further information, please contact Adam Jordahl at the Hamilton Consulting Group, (608) 692-8486, jordahl@hamilton-consulting.com.

¹ Avraham, Ronen, Lynn Baker and Anthony Sebok. "The Anatomy of Consumer Legal Funding." Cardozo Legal Studies Research Paper No. 618/University of Texas Public Law Research Paper No. 723. Published August 10, 2020. Accessed October 10, 2023, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3670825.

² Huff, Aaron. "Court cases reveal secret litigation networks for trucking accidents." *Commercial Carrier Journal*. Published June 27, 2019; updated July 21, 2020. Accessed October 10, 2023, <https://www.cjdigital.com/business/article/14938542/court-cases-reveal-secret-litigation-networks-for-truck-crashes>.



Testimony of Jack Kelly
American Legal Funding Association
Wisconsin Assembly
Committee on Consumer Protection
October 11th, 2023

Chairman and members of the Consumer Protection Committee, thank you for allowing me to address the committee. My name is Jack Kelly. I am the Managing Director of the American Legal Finance Association (ALFA).

By way of introduction, ALFA is a trade association comprising 35 of the nation's leading consumer legal funding companies that do business throughout the United States. One of ALFA's first actions was establishing industry standards for the Consumer Legal Funding industry. The cornerstone of these best practices is transactional transparency and clear disclosure to consumers. As a result, all ALFA members ascribe to the ALFA Best Practices:

- 1). Prohibit any of the funds being used for the costs of the litigation or attorney fees.
- 2) Prohibit the funding company from being involved in any decisions relating to the litigation
- 3). Prohibit funding companies from paying any referral fees
- 4). Prohibit funding companies from using false or misleading advertising and
- 5) Require attorney acknowledgment of all funding.

The committee must know that ALFA members DO NOT PROVIDE FUNDS TO INDIVIDUALS FOR ANY COSTS, FEES, OR EXPENSES RELATED TO THE PROSECUTION OF LITIGATION. Therefore, a plaintiff can SOLELY use the funds provided by ALFA member companies for their personal life needs like rent, food, or other such expenses.

I am here today to respectfully oppose Assembly Bill 464. This bill fails to address the needs of consumers who have a personal injury claim and may need funds to provide for their basic needs, such as housing and living expenses. Adopting this legislation would eliminate the ability of victims who have been injured and unable to work

through no fault of their own to have access to funds. As written, this legislation would eliminate the option provided through consumer litigation funding. Injured persons who cannot rely on family and don't have access to bank loans could face foreclosure, eviction, or loss of their possessions, such as automobiles.

I want to begin by addressing misconceptions and misstatements that have been made about the consumer legal funding industry and the falsity presented that this legislation is about consumer protection.

First, consumer legal funding does not create or increase frivolous litigation. ALFA members DO NOT provide funds unless the plaintiff has a bona fide claim and is represented by an attorney and prohibits any funds from being used to pay attorney fees or any cost related to their case. These cases are already filed before a plaintiff seeks funds for their personal life needs. Funding a frivolous case is against the financial interests of a consumer legal funding company as they would lose the funds they provide to the consumer.

Second, Legal Funding enables a plaintiff to provide for life needs to prevent an eviction, foreclosure, or car repossession. For example, 78% of consumer legal funding is used to avoid foreclosure, nearly 7% for auto payments, and almost 10% for food. Consumer legal funding does not fund the lawsuit or pay for class actions.

Third, consumer legal funding enables a plaintiff to get a fair settlement, not more than they deserve. Plaintiffs often settle their case on the first offer simply because they have no funds to pay for their basic needs. Because consumers face these financial challenges, the first settlement offer is invariably a "lowball" offer. Those advocating this legislation want to eliminate these fundings because low or unfair settlements are more profitable. These individuals cannot say they want to eliminate consumer legal funding, so they tell you this is about consumer protection. That is not true. This legislation is a Trojan horse that looks like consumer protection but is, in effect, a ban on this practice that will stop consumer legal funding in Wisconsin, which will only hurt Wisconsinites. Do not be misled by their claims.

Fourth, consumer legal funding is nonrecourse, and the consumer only pays the monies back if they receive funds in their case. Consumer legal funding companies assume all the risk. These fundings are risky. 12 to 20 % of funded cases are lost or settled for substantially less than expected. If the plaintiff loses their case, the consumer owes nothing, and the legal funding company loses its money. Adjustments are made to the obligation if the case settles for substantially less than expected. A consumer cannot be required to pay back more than they receive. Consumer legal funding is not a loan because a loan must be repaid. Therefore, consumer legal funding is a nonrecourse funding transaction and not a loan.

Fifth, if you adopt this legislation, Wisconsin consumers will be harmed. The proponents of this legislation will be the primary beneficiaries because lowball/unfair settlements are more profitable than equitable settlements. Consumer legal funding allows the consumer to get fair compensation.

If Wisconsin truly desires to create laws to provide consumer protection, ALFA would welcome working with you to address your concerns. ALFA has led the charge in helping adopt sound consumer protection laws in a number of states, including Indiana, Oklahoma, Utah, Nevada, Tennessee, Vermont, Ohio, Maine, Nebraska, and most recently, Missouri.

So, what is the problem with this legislation? It's simple. This legislation treats nonrecourse consumer legal funding transactions as traditional recourse loans that have a full obligation to repay the loan. It imposes a maximum interest rate of 18% per year for 36 months, regardless of how long the funds may be repaid. The proponents of the legislation aim to eliminate this funding option for victims, and they know that a rate of 18% eliminates the practice. Several years ago, West Virginia adopted this same rate. Within months of its adoption, ALFA members and other companies involved in this funding transaction stopped funding transactions in West Virginia and no longer provided funds to West Virginia consumers. The funding market was shut down, and the product, in effect, was prohibited leaving victims without access to these needed funds.

This legislation is a wolf in sheep's clothes, a Trojan horse masked as consumer protection. I ask you not to be fooled by its true intent: to eliminate these funding options for Wisconsin citizens who seek such funds to help provide a lifeline for their life needs, as they await just and equitable compensation for their injuries.

I ask you, Mr. Chairman, members of this committee, is eliminating this funding option what Wisconsin wants? Do you want to prevent Wisconsin citizens from accessing funds for their life needs while pursuing justice? I don't think so, you want true consumer protection, as states like Missouri and Utah have adopted. As written, this legislation as I stated has one goal: to shut down consumer litigation funding in Wisconsin. ALFA and our members stand ready to work with the committee to adopt true consumer protection legislation.

Consumer legal funding provides a financial lifeline when they have nowhere else to turn. It enables a victim to obtain the settlement they deserve without being forced to accept an unfair offer. If you have questions or concerns about this industry, the ALFA members and I stand ready to work with you to address those concerns.