



Ohio Legislature Seeks to Further Regulate Third Party Litigation Funding Agreements

APRIL 2025

Third party litigation funding (“TPLF”) refers to the involvement of non-parties, typically sophisticated financial companies, which invest in lawsuits by paying money to plaintiffs or their counsel in exchange for a contingent interest in the proceeds from the litigation. TPLF agreements have come under increased scrutiny in recent years due to concerns that they can increase the filing of frivolous lawsuits, elevate the profit motive of investors over claimants’ litigation interests, and subject the U.S. legal system to manipulation by malign foreign interests.

Currently, Ohio law permits only “non-recourse civil litigation advance contracts,” which involve cash payments to consumers with a pending civil case in exchange for an amount of the proceeds received in the case. O.R.C. §1349.55. Any other type of TPLF agreements would be void as being against Ohio public policy. *See Rancman v. Interim Settlement Funding Corp.*, 99 Ohio St.3d 121 (2003) (holding that “a contract making the repayment of funds advanced to a party to a pending case contingent upon the outcome of that case is void as champerty and maintenance” except as otherwise permitted by legislative enactment or Ohio ethics rules).

Earlier this year, however, the Ohio General Assembly introduced two identical bills (S.B. 10 and H.B. 105) that would amend the regulation of TPLF agreements under the Ohio Consumer Sales Practices Act. S.B. 10 and H.B. 105 would repeal O.R.C. §1349.55 and replace it with a number of new sections in Revised Code Chapter 1357. The proposed legislation describes two classes of TPLF agreements: “consumer litigation funding agreements” and “commercial litigation funding agreements.” This distinction is important because the proposed legislation imposes different obligations on each type of agreement.

Consumer agreements are those that create a contingent right to receive an “amount” of the potential proceeds and involve cash payments of less than \$400,000. 2025 H.B. No. 105, §1357.01(F). In addition to a 10% interest rate cap and specific disclosure requirements for the agreements themselves, the proposed legislation would impose numerous obligations on parties to consumer litigation funding agreements, the most relevant of which in light of concerns about TPLF agreements include:

- Funders cannot pay or offer to pay commissions or referral fees;
- Funders cannot accept commissions or referral fees;

- Funders cannot refer consumers to a specific attorney, law firm, or medical provider;
- Funders cannot make or influence any decision with respect to the conduct, settlement, or resolution of the consumer's legal claim;
- Attorneys for consumers cannot disclose confidential or privileged information to funders without their clients' consent, and they cannot disclose such information if it is prohibited by court rules, a court order, or the rules of professional conduct;
- If requested by defendants, the consumer must disclose the existence of and produce the funding agreement; and
- Funders cannot enter into agreements with persons or entities that are not domiciled in the United States, nor can they enter into agreements related to legal claims that are directly or indirectly financed by persons or entities not domiciled in the United States.

2025 H.B. No. 105, §§1357.03, 1357.04.

In contrast to consumer agreements, commercial litigation financing agreements create a direct or collateralized "interest" in any proceeds of the lawsuits. 2025 H.B. No. 105, §1357.01(D)(1)(b). The proposed legislation would impose fewer obligations on parties to commercial agreements than those imposed on consumer agreements and include the following:

- Similar to consumer litigation funders, financiers cannot enter into agreements with persons or entities that are not domiciled in the United States, nor can they enter into agreements related to legal claims that are directly or indirectly financed by persons or entities not domiciled in the United States;
- Neither claimants nor attorneys can disclose or share documents that are sealed by the court or subject to a protective order;
- Financiers cannot make any decisions or influence any decisions with respect to the course of the legal claim, including the appointment of counsel, choice of expert witnesses, litigation strategy, and settlement or other resolution; and
- At the time a legal claim is asserted or commenced, claimants and their attorneys shall produce any agreement to all named parties and any insurers of the named parties without waiting for a discovery request and at any time thereafter when an agreement is executed or amended.

2025 H.B. No. 105, §§1357.06, 1357.07.

The Senate Judiciary and House Insurance Committees are conducting hearings on both bills, with numerous interested parties submitting testimony in favor of or against the bills' proposed terms. If enacted, Revised Code Chapter 1357 will provide increased transparency about all potential interested parties to cases filed in Ohio courts.

Additional Information

For more information, please contact:

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