

Memorandum

To: Task Force on Homeowners and Commercial Property Insurance
From: Alliance for Responsible Consumer Legal Funding (ARC)
Re: Importance of Clearly Distinguishing Consumer Legal Funding from Third-Party Commercial Litigation Financing
Date: January 20, 2026

Executive Summary

As the Task Force continues its review of litigation-related financial activity, it is critically important that any policy position or legislative recommendation clearly distinguish Consumer Legal Funding from Third-Party Commercial Litigation Financing. Although both involve funding connected to litigation, they are fundamentally different products serving different markets, raising different policy concerns, and producing different effects on the legal system.

The Consumers in Crisis Protection Act, which was discussed at the Task Force's prior meeting, regulates both consumer legal funding and commercial litigation financing under a single legislative framework, despite acknowledging in its definitions that these products are materially different. If the Task Force elects to take a position on this bill or similar legislation, ARC respectfully requests that it do so in a manner that clearly separates the two products, because the arguments commonly advanced in support of regulating commercial litigation financing do not apply to consumer legal funding.

I. Introduction to Consumer Legal Funding and Its Distinction from Third-Party Litigation Financing

Consumer Legal Funding is a non-recourse transaction in which an individual with a pending legal claim receives funds to cover basic household expenses such as rent, utilities, food, or medical needs while their case is pending. Repayment is contingent on a successful recovery, and if the consumer does not recover, they owe nothing. Consumer Legal Funding, Funding Lives, Not Litigation, is designed to address short-term financial instability, not to influence litigation strategy or case outcomes.

By contrast, Third-Party Commercial Litigation Financing involves institutional capital investments in high-dollar commercial disputes, mass torts, intellectual property litigation, or attorney portfolios. These arrangements often involve sophisticated parties, multi-million-dollar investments, negotiated return structures, and potential concerns regarding influence over litigation strategy, settlement timing, or case selection.

II. The Consumers in Crisis Protection Act Treats Distinct Products Together

The Consumers in Crisis Protection Act explicitly defines both consumer litigation funding and commercial litigation financing, recognizing that they are different products with different characteristics. Despite that recognition, the bill places both products within a single regulatory structure, including shared registration, reporting, and disclosure frameworks.

While commercial litigation financing may warrant heightened scrutiny due to concerns about litigation control, capital markets influence, or foreign investment risks, those concerns are not present in consumer legal funding transactions. Regulating both products together risks imposing commercial-focused assumptions on consumer transactions that are modest in size and designed to protect financially vulnerable individuals.

III. Why Arguments Supporting Regulation of Commercial Litigation Financing Do Not Apply to Consumer Legal Funding

The policy arguments typically raised in favor of regulating third-party commercial litigation financing include concerns about outside influence over litigation strategy, distortion of settlement incentives, speculative investment in lawsuits, and escalation of litigation costs.

None of these concerns apply to consumer legal funding. Consumer legal funding does not finance litigation costs, providers have no right to direct or influence litigation decisions, claims already exist before funding is provided, and transaction amounts are modest and intended solely for household stability.

IV. Why Clear Distinction Improves the Legal System and Supports Tort Reform

Clear legislative separation strengthens the legal system and aligns with tort reform objectives by preserving attorney independence, preventing premature financially driven settlements, ensuring injured parties can evaluate settlement offers on their merits, avoiding regulatory overreach that eliminates lawful consumer options, and allowing policymakers to focus reform efforts on genuine systemic risks.

V. Request to the Task Force

If the Task Force chooses to take a position on the Consumers in Crisis Protection Act or similar legislation, ARC respectfully requests that it clearly distinguish Consumer Legal Funding from Third-Party Commercial Litigation Financing, acknowledge that the policy concerns motivating regulation of commercial litigation financing do not apply to consumer legal funding, and avoid recommending legislative approaches that conflate consumer household-support products with commercial litigation investment vehicles.

Conclusion

Consumer Legal Funding and Third-Party Commercial Litigation Financing are fundamentally different products. Treating them as interchangeable undermines sound policymaking, harms consumers in crisis, and distracts from legitimate tort reform goals. Clear statutory and policy distinctions allow lawmakers and task forces to address real risks without eliminating lawful, consumer-focused financial tools.