

Suggested Changes to NCOIL TPLF Model Draft

The Alliance for Responsible Consumer Legal Funding (ARC) would like to suggest the following changes to the NCOIL TPLF Model Draft.

Definitions Section 3: “Charges”

ARC would like to suggest the following changes to the "Charges" section of the NCOIL TPLF Model Draft, highlighting the known absence of any Model Legislation by NCOIL that restricts industry or company profitability. This emphasizes the potential broader implications of introducing such legislation and advocates for individual state autonomy in making these determinations based on their political environment.

In essence, the potential of implementing Model Legislation that imposes limitations on industry profitability, citing NCOIL's lack of such proposals and the potential ripple effects on other industries. ARC rather advocates for a state-by-state approach, emphasizing the need for individual determination within the free market framework. This perspective underscores a commitment to preserving the autonomy of states in making decisions that align with their unique political environments and underscores a dedication to the principles of free market economics.

By having a decentralized approach; this ensures the autonomy of states in making decisions that align with their specific political landscapes. The underlying message underscores a dedication to upholding principles of state sovereignty, free market dynamics, and the importance of carefully considering the potential broader implications of legislative proposals.

Suggested changes

Section 3: Definitions

2. "Charges" means the amount of money to be paid to the consumer litigation funding company by or on behalf of the consumer, above the funded amount provided by or on behalf of the company to a consumer pursuant to this Act. Charges include all administrative, origination, underwriting or other fees, including interest, no matter how denominated. ~~Such charges shall not exceed the maximum annual percentage rate as provided for in Title 10, United States Code, section 987(b). Any contract which exceeds such rate shall be considered usurious as defined by [insert citation to state usury law].~~

Section 7: Disclosures

The proposed changes to the "Disclosure" section of the proposed model bill highlight the need to address a built-in advantage as currently enjoyed by the defense in the legal claim in the current version that is not available to other parties. The existing language of the model bill is seen as conferring an unfair advantage to the defense. Consequently, the proposed language by ARC aims to rectify this by allowing the defense to be informed about the existence of a consumer legal funding transaction without infringing upon their existing rights within the judicial system. This proposed change seeks to create a more equitable and balanced framework for all parties involved in legal proceedings, ensuring that the defense is not unduly advantaged by the current language of the bill.

This reflects a broader commitment to fairness and justice within the legal system, aiming to ensure that no party is unfairly advantaged, or disadvantaged by the language of the model bill.

Suggested changes

Section 7: Disclosures

- ~~1. In a civil proceeding in which a plaintiff enters into a consumer litigation funding contract, the contents of the consumer litigation funding contract are subject to discovery under the [State] Rules of Trial Procedure by a party other than the plaintiff, or an insurer that has a duty to defend another party in the civil proceeding.~~
- ~~2. In a civil proceeding in which a plaintiff enters into a consumer litigation funding contract, the plaintiff or the plaintiff's attorney shall provide to each of the other parties in the civil proceeding, and each insurer that has a duty to defend another party in the civil proceeding, written notice that the plaintiff has entered into a consumer litigation funding contract.~~
- ~~3. A plaintiff or the plaintiff's attorney shall provide the written notice required by subsection 2. Within a reasonable time after the date on which the consumer litigation funding contract was executed.~~

Replace with:

1. In general-- Upon receipt of a written discovery request, a consumer's attorney shall disclose to the requesting party whether a consumer has entered into a Consumer Litigation Funding transaction within 30 calendar days of receipt of written request.
2. Notwithstanding any agreement or provision with respect to confidentiality, consumer litigation funding contracts are subject to the rules of civil procedure regarding discovery.
3. Admission— Consumer Litigation Funding transactions disclosed pursuant to this amendment are presumed to be inadmissible as evidence or at trial.

Recommend splitting Consumer Legal Funding and Commercial Litigation Financing issues into two separate pieces of legislation.

- ARC would like to suggest the separation of the model bill into two distinct pieces of legislation, by highlighting the fundamental differences between Consumer Legal Funding and Commercial Litigation Financing.
 - We would like to underscore the crucial need to recognize the contrasting nature of Consumer Legal Funding and Commercial Litigation Financing, advocating for their regulation as two separate products. We would like to emphasize that Consumer Legal Funding is geared toward individual plaintiffs involved in specific legal disputes, providing financial assistance for household needs rather than legal expenses. Conversely, Commercial Litigation Financing primarily serves businesses and corporations in navigating the intricate legal landscape and covering the substantial costs associated with bringing forth litigation cases.
 - The types of cases each funding type addresses further accentuate their distinct purposes, with Consumer Legal Funding focusing on consumer-related disputes such as personal injury and wrongful convictions as an example; while Commercial Litigation Financing pertains to complex cases involving intellectual property, shareholder lawsuits, and antitrust claims to name a few. Additionally, the contrast in funding amounts between the two types further underscores the need for separate regulation, with Consumer Legal Funding typically involving amounts in the thousands, and Commercial Litigation Financing reaching into the millions of dollars. The central argument revolves around the necessity to regulate these two funding types separately to prevent confusion and ensure clarity regarding their intended purposes and scopes.
 - We believe this provides a compelling case for the division of the model bill into two distinct pieces of legislation, emphasizing the inherent differences between Consumer Legal Funding and Commercial Litigation Financing. It clarifies the distinct scopes and purposes of these funding types, highlighting the specific focus of Consumer Legal Funding on individual plaintiffs' household needs in legal disputes, and the role of Commercial Litigation Financing in assisting businesses and corporations in complex legal matters. The delineation of the types of cases each funding type typically addresses and the marked contrast in funding amounts further bolsters the argument for separate regulation to avoid confusion and conflation.

Ultimately, by separating into two pieces of legislation it underscores the necessity of recognizing and regulating these two products independently to ensure clarity and precision in their application and oversight.

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