

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 850**

By Senator Trump

[Passed March 9, 2024; in effect 90 days from  
passage]

1 AN ACT to amend and reenact §46A-6N-1, §46A-6N-4, §46A-6N-6, §46A-6N-7, and §46A-6N-9 of  
2 the Code of West Virginia, 1931, as amended, all relating to consumer litigation financing;  
3 defining terms; adding term; removing commercial tort claims exclusion from definition of  
4 litigation financing; excluding certain non-profit organizations from the definition of litigation  
5 financing; prohibiting assignment of litigation financing contract in certain instances;  
6 requiring disclosure of third-party litigation financing agreements to parties; clarifying who  
7 is to provide disclosure of third-party litigation financing agreements; and establishing cap  
8 for the annual fee a litigation financier may charge a natural person.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 6N. CONSUMER LITIGATION FINANCING.**

**§46A-6N-1. Definitions.**

1 For purposes of this article:

2 (1) "Consumer" means any person who resides, is present, or is domiciled in this state who  
3 claims an entitlement to a judgment, award, settlement, or verdict with respect to a legal claim but  
4 does not include an attorney representing that person;

5 (2) "Litigation financier" means a person, entity, or partnership engaged in the business of  
6 litigation financing; and

7 (3) "Litigation financing" or "litigation financing transaction":

8 (A) Means a transaction in which financing is provided to a consumer in return for a  
9 consumer's assigning to the litigation financier a right to receive payment contingent in any respect  
10 on the outcome of the legal claim; and

11 (B) Does not include:

12 (i) Legal services provided on a contingency fee basis, or advanced legal costs, where  
13 such services or costs are provided to or on behalf of a consumer by an attorney representing the  
14 consumer in the dispute and in accordance with the West Virginia Rules of Professional Conduct;

15 (ii) A consumer loan, as defined by §46A-1-102 of this code;

16 (iii) A claim under the Workers' Compensation Law, compiled in §23-1-1 *et seq.* of this  
17 code;

18 (iv) Lending or financing arrangements between an attorney or law firm and a lender,  
19 provided such arrangements do not give the lender any particularized interest in the outcome of  
20 any legal claim or portfolio of legal claims; or

21 (v) Nonprofit organizations provided any financing provided to or by the nonprofit  
22 organization does not afford the non-party agreeing to pay legal expenses profit from the legal  
23 claim beyond repayment of the amount it has contractually agreed to provide, along with  
24 reasonable interest not to exceed the Wall Street Journal prime rate at the time the agreement was  
25 executed, plus three percent per year.

**§46A-6N-4. Litigation financier prohibitions.**

1 (a) A litigation financier shall not:

2 (1) Pay or offer to pay commissions, referral fees, or other forms of consideration to any  
3 attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees for  
4 referring a consumer to a litigation financier;

5 (2) Accept any commissions, referral fees, rebates, or other forms of consideration from an  
6 attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees;

7 (3) Advertise false or misleading information regarding its products or services;

8 (4) Refer a consumer or potential consumer to a specific attorney, law firm, medical  
9 provider, chiropractor, physical therapist, or any of their employees: *Provided*, That if a consumer  
10 does not have legal representation, the provider may refer the consumer to a local or state bar  
11 referral service operated by a bar association;

12 (5) Fail to promptly supply copies of any and all complete litigation financing contracts to  
13 the consumer and the attorney representing the consumer in the dispute;

14 (6) Attempt to obtain in the litigation for which the litigation financing transaction exists a  
15 waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages to  
16 which the consumer might otherwise be entitled;

17 (7) Attempt to effect in the litigation for which the litigation financing transaction exists  
18 mandatory arbitration or otherwise effect waiver of a consumer's right to a trial by jury;

19 (8) Offer or provide legal advice to the consumer regarding the litigation financing or the  
20 underlying dispute;

21 (9) Assign, which includes securitizing, a litigation financing contract between a consumer  
22 who is a natural person and a litigation financier, in whole or in part, to a third party: *Provided*, That:

23 (A) §46A-6N-4(9) of this code does not prevent a litigation financier that retains  
24 responsibility for collecting payment, administering, or otherwise enforcing the litigation financing  
25 contract from making an assignment that is:

26 (i) To a wholly owned subsidiary of the litigation financier;

27 (ii) To an affiliate of the litigation financier that is under common control with the litigation  
28 financier; or

29 (iii) A grant of a security interest that is made pursuant to §46-9-101 *et seq.* of this code or  
30 is otherwise permitted by law; and

31 (B) If an assignment is authorized and made pursuant to §46A-6N-4(9) of this code, for  
32 purposes of this section, "litigation financier" includes a successor-in-interest to a litigation  
33 financing contract;

34 (10) Report a consumer to a credit reporting agency if insufficient funds remain from the  
35 net proceeds to repay the litigation financier; or

36 (11) Receive any right to direct or make any decisions with respect to the conduct of the  
37 consumer's legal claim or any settlement or resolution. The right to make such decisions shall  
38 remain solely with the consumer and his or her attorney.

39 (b) An attorney or law firm retained by a consumer shall not have a financial interest in a  
40 company offering litigation financing to consumers and shall not receive a referral fee or other  
41 consideration from the company, its employees, or its affiliates.

42 (c) A personal injury attorney or law firm, practicing in West Virginia, retained by a  
43 consumer shall not have a financial interest in a company offering litigation financing to consumers  
44 and shall not receive a referral fee or other consideration from the company, its employees, or its  
45 affiliates.

**§46A-6N-6. Third-party agreements.**

1 (a) Except as otherwise stipulated or ordered by the court, a party or his or her counsel  
2 shall, without awaiting a discovery request, provide to the other parties any agreement under  
3 which any litigation financier, other than an attorney permitted to charge a contingent fee  
4 representing a party, has a right to receive compensation that is contingent in any respect on the  
5 outcome of the legal claim.

6 (b) For purposes of this section only, the terms "litigation financing" and "litigation financier"  
7 also include financing provided to an attorney or law firm where the right to receive repayment is  
8 contingent in any respect on the outcome of the consumer's legal claim.

**§46A-6N-7. Violation; enforcement.**

1 (a) Any violation of this article shall make the litigation financing contract unenforceable by  
2 the litigation financier, the consumer, law firm, or any successor-in-interest to the litigation  
3 financing contract. The court may, in the event that judgment is awarded to the plaintiff, assess  
4 costs of the action, including reasonable attorneys' fees, against the defendant.

5 (b) Nothing in this article shall be construed to limit the exercise of powers or the  
6 performance of the duties of the Attorney General, including those provided by the West Virginia  
7 Consumer Credit and Protection Act, which the Attorney General is otherwise authorized or  
8 required to exercise or perform by law.

**§46A-6N-9. Fees; terms; incorporation of obligations in agreement.**

1 (a) A litigation financier may not charge a consumer who is a natural person an annual fee  
2 of more than 18 percent of the original amount of money provided to the consumer for the litigation  
3 financing transaction.

4 (b) Litigation financiers shall not charge a consumer the annual fee authorized by  
5 §46A-6N-9(a) of this code more than one time each year with regard to any single legal claim  
6 regardless of the number of litigation financing transactions that the litigation financier enters into  
7 with the consumer with respect to such legal claim.

8 (c) Fees assessed by a litigation financier may compound semiannually but may not  
9 compound based on any lesser time period.

10 (d) In calculating the annual percentage fee or rate of return, a litigation financier must  
11 include all charges payable directly or indirectly by the consumer and must compute the rate  
12 based only on amounts actually received and retained by the consumer.

13 (e) A litigation financier may not assess fees for any period exceeding 42 months from the  
14 date of the contract with the consumer.

15 (f) Litigation financiers shall not enter into an agreement with a consumer that has the  
16 effect of incorporating the consumer's obligations to the litigation financier that are contained in the  
17 original litigation financing transaction into a subsequent litigation financing transaction.

18 (g) Litigation financiers shall not knowingly provide financing to a consumer who has  
19 previously assigned and/or sold a portion of the consumer's right to proceeds from his or her legal  
20 claim without first making payment to and/or purchasing a prior unsatisfied litigation financier's  
21 entire funded amount and contracted charges unless a lesser amount is otherwise expressly  
22 agreed to in writing by the litigation financiers; except multiple litigation financiers may agree to  
23 contemporaneously provide financing to a consumer, provided that the consumer and the  
24 consumer's attorney consent to the agreement in writing.