mgc

NC Litigation Funding Ban Sets Model For Other States

September 9, 2026

CONTRIBUTORS

Heather G. Connor
704.405.4664
heather.connor@mgclaw.com

JD Keister
919.719.8249
jkeister@mgclaw.com

Media Contact
Erica Gianetti
Marketing & Communications Supervisor
erica.gianetti@mgclaw.com

When states set out to address third-party litigation funding, most have reached for the same tool: disclosure. Georgia, Ohio and New York have all recently required funders to register, reveal their agreements or limit their influence, while leaving the underlying business untouched.

North Carolina took a different path. On June 22, it prohibited the practice outright. That choice is the more sensible one. Legislatures worried about rising liability costs and the commercialization of their courts should treat North Carolina's law as a model because a ban addresses the distortion that disclosure only documents.

What North Carolina Enacted

Gov. Josh Stein signed H.B. 315, the Prohibit Litigation Investments Act, on June 22, and it took effect immediately. The act applies to civil proceedings commenced, and funding contracts entered into, renewed or amended, on or after that date.

It passed nearly unopposed — unanimously in the North Carolina House of Representatives and with a single dissenting vote in the North Carolina Senate — making North Carolina the first state in the country to prohibit third-party litigation funding rather than merely regulate it.

The operative provision is direct: "It is unlawful for a person to engage in litigation investment in this State or to furnish litigation investment to a party or counsel of record in a civil proceeding in this State."[1]

The act defines "litigation investment" as the provision of money — "whether as a direct payment, advancement, loan, investment, or otherwise" — for the costs of a pending or potential civil proceeding in exchange for a right to repayment "contingent in any respect on the outcome" of that proceeding.[2]

Critically, the ban is targeted, not indiscriminate. The statute carves out nine exceptions, preserving contingency-fee representation, an attorney's advancement of litigation costs, an insurer's contractual duty to defend or indemnify, nonprofit and pro bono legal services, noncontingent loans, and support from immediate family members.[3]

In other words, the act leaves intact every established mechanism that genuinely widens access to the courts, and removes only the outcome-contingent outside investment that is its actual target.

Enforcement has teeth. Any contract that violates the act is void. The attorney general may sue to enjoin violations, and a court may impose a civil penalty of up to $50,000 per violation.[4] A person injured by a violation also has a private right of action and may elect treble damages measured by the full potential investment the funder contemplated, plus costs and attorney fees. Out-of-state funders are deemed subject to North Carolina jurisdiction.[5]

Why Prohibition Beats Disclosure

The case for North Carolina's approach begins with what disclosure does and does not accomplish. Disclosure tells the parties and the court that an outside investor stands to profit from the litigation.

It does not change the fact that the investor is there, that its capital is funding the case, or that its economic interest may diverge from the plaintiff's best interest. The regulatory states have improved transparency without altering the incentive structure that transparency is meant to expose.

Consider the leading regulatory models.

Georgia's S.B. 69, signed April 21, 2025, requires funders to register with the Georgia Department of Banking and Finance, bars financing tied to foreign adversaries and sovereign wealth funds, and makes funding agreements over $25,000 discoverable.[6]

Ohio's new Chapter 1357, effective Oct. 6, 2026, prohibits commercial funders from influencing litigation or settlement decisions, requires disclosure of agreements to the state attorney general, and bans foreign-domiciled funding.[7]

New York's Financial Services Law, Article 10, effective June 17, 2026, imposes detailed consumer disclosures, caps a funder's take at 25% of gross recovery and limits any single funding to $500,000.[8]

Each of these regulations is meaningful reform, but each concedes the central point: Litigation funding will remain a permanent feature of the state's civil justice system. That concession is the weakness.

A disclosure rule requires courts and litigants to police, case by case, whether a funder is exercising the practical influence that accompanies substantial financial investment even where the contract formally disclaims control.

Ohio's own statute proves the difficulty: The state must expressly forbid funders from making, influencing or directing decisions on counsel, experts, strategy and settlement, a prohibition that would be unnecessary if disclosure alone neutralized the concern.[9]

North Carolina removes the need for that case-by-case policing by removing the investor. A rule that eliminates the conflict is simpler to administer, and more certain in effect.

In February, Sen. Chuck Grassley, R-Iowa, chairman of the U.S. Senate Judiciary Committee, proposed the Litigation Funding Act, which would require disclosure only in mass tort and class action suits, and only where the funder is a commercial enterprise, foreign state, foreign person or sovereign wealth fund.

Grassley had also introduced the Litigation Funding Transparency Act in 2021, but it never passed.

A separate effort to tax funding proceeds, the Tackling Predatory Litigation Funding Act — introduced in 2025 by Sen. Thom Tillis, R-N.C., with a U.S. House of

Representatives companion bill introduced by Rep. Kevin Hern, R-Okla. — was removed from the One Big Beautiful Bill Act rather than defeated on the merits.

After years of federal half measures, North Carolina simply resolved the issue in the most direct way.

The Access-to-Justice Objection Answered

The strongest argument for litigation funding is access to justice: Meritorious claims are sometimes abandoned because a plaintiff cannot outlast a well-funded opponent. That argument deserves a serious answer, and North Carolina's statute supplies one.

The American legal system has long provided access through contingency-fee representation, under which the attorney assumes the financial risk while remaining bound by fiduciary and ethical duties owed exclusively to the client. H.B. 315 leaves that model and the advancement of costs, nonprofit funding and family support that supplement it entirely intact.[10] What it removes is the outside funder whose duties run to its own investors, and whose objective is not to maximize the client's recovery but to earn a return on capital.

That distinction is the heart of the matter. When the party with the largest financial stake in a lawsuit is a stranger to it, the litigation begins to serve the investment rather than the claimant. North Carolina concluded that access to justice can be preserved through the professionals who owe the client undivided loyalty.

Why the Rest of the Country Should Watch

The benefits North Carolina is pursuing extend well beyond its borders, because the costs of funded litigation do too.

The Swiss Re Institute identifies third-party litigation funding as "a contributing factor to the trend of social inflation in the US," finding that it incentivizes litigants to initiate and prolong lawsuits, contributes to higher awards and longer cases, and ultimately drives up insurance premiums while reducing the availability of liability coverage.[11]

Those costs are not absorbed by insurers alone. They reach employers, healthcare providers, manufacturers, municipalities and small businesses, and they surface in premiums, operating expenses and consumer prices.

The backdrop is a documented surge in verdict severity. The U.S. Chamber's Institute for Legal Reform found, in a 2024 report analyzing verdicts between 2013 and 2022, that nuclear verdicts of $10 million or more rose sharply in both size and frequency.

And Marathon Strategies reported in August a "record-breaking surge in nuclear verdicts in 2025, with nearly 200 jury awards of $10 million or more totaling over $25.6 billion — a 40.7% increase from 2024 and the highest annual total Marathon has recorded since 2009."[12]

These verdicts are concentrated in state courts, roughly $108 billion since 2009, compared with $61 billion in federal courts, according to Marathon Strategies' statistics between 2009 and 2022, and in a handful of jurisdictions whose local rules and damages regimes favor large awards.[13]

No serious observer claims litigation funding alone caused this trend; shifting juror attitudes and litigation tactics play a large role as well.[14] But funding is increasingly part of the machinery that turns those attitudes into outsized recoveries, and it is the part a legislature can most directly switch off.

That is why North Carolina merits attention.

Insurers will watch whether the prohibition affects claim severity, settlement timing and reserve development. Commercial policyholders facing rising premiums will look for evidence that a more predictable litigation environment improves affordability and availability. Businesses weighing where to invest may factor in the stability of the state's legal climate. Legislatures in states struggling with social inflation now have a working example of a more direct alternative.

North Carolina has changed the terms of the debate. The question is no longer only how to disclose outside investment in lawsuits, but whether to permit it at all.

For the first time, a state has answered that civil litigation should not function as an investment vehicle for outside financiers, and it has done so while protecting every traditional avenue to the courthouse. States confronting the same pressures should give that answer serious consideration. North Carolina may well have written the blueprint for the next generation of tort reform.

Originally published posted by Law360.

---

[1] N.C. Gen.Stat. Ann. § 66-513.

[2] N.C. Gen.Stat. Ann. § 66-512.

[3] N.C. Gen.Stat. Ann. § 66-512.

[4] N.C. Gen.Stat. Ann. § 66-514.

[5] N.C. Gen.Stat. Ann. § 66-514.

[6] Ga. Code Ann. § 9-11-26.

[7] Ohio Rev.Code Ann. § 1357.09; Ohio Rev.Code Ann. § 1357.07.

[8] N.Y. Fin. Serv. § 1001 (McKinney); N.Y. Fin. Serv. § 1003 (McKinney); N.Y. Fin. Serv. § 1005 (McKinney).

[9] Ohio Rev.Code Ann. § 1357.09.

[10] N.C. Gen.Stat. Ann. § 66-512.

[11] Allocation of Losses in Complex Insurance Coverage Claims § 19:4., by Seaman and Schulze (2025).

[12] Allocation of Losses in Complex Insurance Coverage Claims § 19:4., by Seaman and Schulze (2025).

[13] Allocation of Losses in Complex Insurance Coverage Claims § 19:4., by Seaman and Schulze (2025).

[14] 'Swiss Re releases study on the rise of nuclear...', by David Erickson, Adam Miller, Joseph Zaleski, Jennifer Hackman, Nisha Albert, Christopher Sorenson, Jacob L. Taylor, Shook, Hardy & Bacon LLP. (2025).