

# North Carolina Passes Bill to Prohibit Third Party Litigation Funding

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Over the last decade, our industry has seen firsthand the rapid growth of third-party litigation funding (TPLF), an industry that allows outside investors to finance lawsuits in exchange for a financial interest in the outcome of the case. What began as a niche investment strategy has evolved into a multi-billion-dollar global industry that has attracted hedge funds, private equity firms and foreign investors seeking returns from litigation. These funding companies often take a role in attorney and expert selection. TPLF has unquestionably played a large part in increased indemnity and social inflation. Recognizing these concerns, North Carolina has taken a significant step by enacting the Prohibit Litigation Investments Act. The Act was signed into law on June 22<sup>nd</sup> via House Bill 315 and applies to litigation and contracts from the effective date forward.

The new law seeks to prohibit individuals and entities from providing money for the fees, costs or expenses of a pending or potential civil proceeding when repayment is contingent upon the outcome of the case. In other words, outside investors may no longer purchase a financial stake in North Carolina civil litigation. Contracts that violate the statute are void and subject to substantial enforcement remedies, including civil penalties, injunctive relief, treble damages and attorneys' fees. The legislation contains several important exceptions, including traditional contingency fee arrangements, attorney advancement of litigation costs, insurance defense and indemnity obligations, non-profit legal services and ordinary loans that are not tied to the outcome of a case.

North Carolina's action reflects a growing national debate over the role of litigation finance. Across the country, businesses, carriers and defense organizations have raised concerns about the lack of transparency surrounding litigation funding agreements and the potential influence of investors on litigation strategy and settlement decisions. While some jurisdictions have focused on disclosure requirements, North Carolina has chosen a far more direct approach by prohibiting outcome-based litigation investments altogether.

For insurers, employers and businesses operating in North Carolina, this legislation represents a meaningful tort reform measure. By reducing the ability of outside investors to profit from lawsuits, proponents believe the law will help restore focus to the actual merits of disputes, reduce artificial inflation of claim values and encourage more efficient resolution of civil cases by the true parties in interest. Whether the legislation ultimately produces measurable reductions in litigation costs remains to be seen, but it unquestionably takes a position on the role of TPLF in civil litigation.

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