



RON TUSLER

STATE REPRESENTATIVE • 3rd ASSEMBLY DISTRICT

Assembly Bill 858

Assembly Committee on Consumer Protection

Public Hearing

February 16, 2022

Chair Dittrich and fellow members of the Assembly Committee on Consumer Protection: thank you for hearing this bill today. The bill before you is Assembly Bill 858 (AB 858) relating to: consumer lawsuit lending and providing a penalty.

Consumer lawsuit lending is a form of financing or lending provided to a plaintiff in a lawsuit, with repayment coming from the plaintiff's recovery, if there is any recovery. Often, consumer lawsuit lending results in a plaintiff paying very high effective interest rates, leaving a winning plaintiff with little financial recovery at the end of a successful suit, due to these high interest rates, which can be considered a form of predatory lending.

Typically, a plaintiff will take out such a loan and will only borrow a few hundred dollars but, when the money is repaid, ends up repaying a multiples of what was borrowed. In a study by faculty at the Cardozo School of Law and the University of Texas School of Law, though the average amount provided to a consumer in a motor vehicle case was \$5,227, the amount *due* for repayment was \$13,515 (with a median amount provided was \$2,000, with the median amount due \$3,961).

Such practices seem to be increasing and becoming more the norm in Wisconsin, so AB 858 seeks to put some reasonable regulations in place so plaintiffs in Wisconsin do not fall victim to such practices. This bill does not seek to eliminate the industry or all of its practices; rather, the bill seeks to make some modest regulations of the industry. The bill would cap the interest rate on such 18 percent, and the fees collected by lenders at \$360. This bill would also limit the terms of the loan to no more than three years and allow the plaintiff to rescind the transaction in five days. Much of what is incorporated in this bill has been adopted in similar legislation in a variety of states.

I, personally, have seen firsthand individuals who have fallen victim to such lending practices. A client of mine took out a \$500 loan to pay some bills while her case made its way through the courts. When all was said and done, she ended up having to pay over \$2,400 – that is almost a 500% increase for the cost of the loan. That is unacceptable! Please join me and support making reasonable regulations to this industry.

Thank you again, member of the Assembly Committee on Consumer Protections for hearing my testimony.

2-14-22

I am Linda L. Rasse,
I am App liton, wisconsin.
I am a senior citizen and
I don't have alot of money.

I applied for a loan
from Oasis lien. I had
an accident and I ran out
of money and that is the reason
why I took the loan out.
But prior to my signing the
loan documents, I was not
informed of the penalties
or interest rates. I don't
believe I was ever told as
to how long this would take
to pay back. They never told
me if I could pay it off sooner.
I am not impressed with them.
The penalties cursed me
harm because when I actually
had to pay them back, I

had to pay 2,415.00 for only
a 500.00 loan. If that
isn't a hardship, I don't
know what is. This is a
4.83%, which is a very high
amount of interest. This is
a terrible thing to do to a
senior citizen. If I would
have known more information,
I would not have done this.

Sincerely,

Linda Prase



TIP McGUIRE

WISCONSIN STATE REPRESENTATIVE

February 16, 2022

Assembly Committee on Consumer Protection
2021 Assembly Bill 858
Representative Tip McGuire

Chairwoman Dittrich, Vice Chairman Edming, and members of the Assembly Committee on Consumer Protection; thank you for holding a public hearing on 2021 Assembly Bill 858, which seeks to regulate consumer lawsuit lending in Wisconsin. This bipartisan legislation will implement important protections for consumers to ensure the people of our state are not taken advantage of by predatory lawsuit lending practices.

Consumer lawsuit lending, as defined by the bill, is a loan made to an individual to use for any purpose other than prosecuting the consumer's dispute. The repayment of the loan is conditional, based on the proceeds of the individual's resolution of the case.

Consumer lawsuit lending is far more prevalent in other states, and unfortunately, when not reined in, can have devastating effects on consumers. Much like other predatory loans, when not properly regulated, the rates and terms of the loan can leave the consumer in a much worse place financially after the loan than before. For lawsuit lending, even though the loans are conditional, in states without proper protections, consumers can win a large settlement in their case, only to owe nearly the entire settlement back to the lender – or in extreme cases, more than the settlement itself.

This can be disastrous for an individual, for example, who was injured and has medical bills that they are attempting to recoup via litigation. Consumer lawsuit lending has a role in ensuring that the individual can pay their bills while litigation progresses, but when the litigation is over, a predatory loan will simply swap their medical debt for debt to a loan company. Assembly Bill 858 seeks to create protections for consumers in Wisconsin to avoid these type of outcomes.

Assembly Bill 858 would institute an 18% rate cap for consumer lawsuit lending, along with a cap on fees, and the total length of the loan. The bill also ensures that the loan can never become larger than the eventual proceeds of the case, and that the loan company does not have a right to intervene in the case in any way.

Once again, thank you for your consideration of this important piece of legislation. I support AB 858, and I am hopeful that this committee will agree that this legislation provides necessary safeguards against predatory practices in consumer lawsuit lending.



STATE SENATOR

Eric Wimberger

DISTRICT 30

Testimony on Assembly Bill 858

Assembly Committee on Consumer Protection

Wednesday, February 16, 2022

Madame Chair, I am pleased to come before you to testify in favor of Assembly Bill 858, a consumer protection bill that has bipartisan support and co-sponsorship.

AB 858 would put reasonable limitations on the repayment rate a consumer would have to pay to a lender who has provided a "consumer lawsuit loan." A consumer lawsuit loan, as defined in the bill is money lent to a party in a lawsuit, often the plaintiff that the party can use for any purpose other than for prosecuting the dispute. In other words, it is a loan that you can use for whatever you need while you're waiting for a dispute or lawsuit to settle. You then pay back the loan when you receive the proceeds of your settlement. In fact, the loan is only paid back if there is a settlement or judgement.

The protection this law puts in place is for the consumer who then goes to pay back the loan. An interest rate cap of 18% is put in place to limit the amount a party would have to pay back to the lender. Other protections, like requiring the loan to be in writing, providing five days to rescind the transaction, and capping the fees the lender may charge also are provided in the bill.

As we all know, 18% is much higher than the interest rate most of us see on our mortgage or car loans. It is more in the neighborhood of credit card interest rates. But the 18% interest rate is necessary to limit the exorbitant rates currently seen in this lending arena. Repayment rates at double or even triple the amount of the loan are not unusual where it is not regulated. Although these loans are not often high dollar amount, it is still difficult to grasp the idea of paying nearly \$5,000 on a \$2,500 loan, or over \$13,000 on a \$5,000 loan. Yet University studies have shown this to often be the case.

The interest rate cap as well as the consumer protection provisions in this bill will allow this specialized form of lending to continue, but will put in place predictable and reasonable guidelines that protect all parties involved. I thank you for your time and encourage your support of this important bi-partisan consumer protection bill. I'll be happy to answer any questions.

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MARY FELZKOWSKI

STATE SENATOR • 12TH SENATE DISTRICT

Testimony on AB 734

Assembly Committee on Consumer Protection

Senator Mary Felzkowski

12th Senate District

February 16, 2022

Chair Dittrich and Fellow Members of the Committee,

Thank you for the opportunity to testify on Assembly Bill 734, which will provide a liability exemption for motor vehicle sellers after a sale.

Nowadays, personal motor vehicles play an important role in many of our lives, providing an easy means of transportation from one place to another. At a certain point in a vehicle's life, an owner may choose to sell their car or truck- maybe they want to upgrade to a nicer, newer vehicle, or maybe the cost of maintaining their current vehicle has become too high. Regardless of the reason, there are a number of routes an owner may take to sell their vehicle. Some folks may choose to do a trade-in, some may choose to sell through a dealership, and many choose to make private sales.

Private sales of vehicles are incredibly common, and can benefit both the buyer and the seller, as there is no middle man incurring further costs. While there are plenty of upsides to private sales, in current law there are downsides as well that may unfairly impact the seller. In Wisconsin, individuals who privately sell a vehicle are liable for any illegal actions committed by the buyer if the vehicle's title has not officially changed hands yet. For instance, if I sell a car to my neighbor and they get in an accident before the vehicle is officially re-titled, as the process of transferring a title can take several days to complete, I could still be held liable for any damages incurred.

This simple, commonsense bill clarifies in statute that liability is transferred to the buyer once the title is signed and transferred, and the sale is completed. This immunity doesn't apply if death or injury occurs due to the seller's willful or wanton acts or omissions, and it does not apply to motor vehicle or wholesale dealers.

As a quick note, Substitute Amendment 1 was written in response to concerns expressed by the Department of Transportation, and seeks to ensure AB 734 is consistent with the case law established by *Bachelor v. Employers Mutual Liability Ins. Co.* (1980). The amendment sets

forth that if a title is transferred along with a vehicle, the seller has immunity. However, in the instances where a title may not be involved in a sale, the intent to transfer ownership behind a sale made between a seller and buyer is recognized, and immunity is thus provided for a seller in that circumstance as well.

I am grateful to my Assembly author, Rep. Duchow, and her staff, for their hard work on this legislation. Thank you for your time today, and thank you for your consideration of this bill.



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

The Wisconsin Civil Justice Council's mission is to promote fairness and equity in Wisconsin's civil justice system, with the ultimate goal of making Wisconsin a better place to work and live. WCJC achieves this objective through policy development and legislative lobbying. WCJC's positions are set by its 16-member board that consists of representatives from Wisconsin's leading business and professional organizations.

Officers & Board Members

President – Bill G. Smith
National Federation of Independent Business

Vice President – Scott Manley
Wisconsin Manufacturers and Commerce

Treasurer – Andrew Franken
Wisconsin Insurance Alliance

Secretary – Brad Boycks
Wisconsin Builders Association

John Mielke
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Wisconsin Automobile & Truck Dealers Association

Rose Oswald-Poels
Wisconsin Bankers Association

John Holevoet
Wisconsin Dairy Business Association

Mary Perry
Wisconsin Economic Development Association

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Wisconsin Hospital Association

Mark Grapentine
Wisconsin Medical Society

Neal Kedzie
Wisconsin Motor Carriers Association

Matthew Hauser
Wisconsin Petroleum Marketers & Convenience Store Association

Kristine Hillmer
Wisconsin Restaurant Association



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Wisconsin Medical Society

Neal Kedzie
Wisconsin Motor Carriers Association

Matthew Hauser
Wisconsin Petroleum Marketers & Convenience Store Association

Kristine Hillmer
Wisconsin Restaurant Association

To: Chairperson Dittrich
Members, Assembly Committee on Consumer Protection
From: R.J. Pirlot, Executive Director
Date: February 16, 2022
Re: Please Support AB 858 – Consumer Lawsuit Lending

The Wisconsin Civil Justice Council and its members work together to promote fairness and equity in Wisconsin's civil justice system, with the goal of making Wisconsin a better place to work and live. **On behalf of our sixteen members, we request you support Assembly Bill 858 authored by Reps. Tusler & McGuire and Sens. Wimberger & Roys.**

Consumer lawsuit lending is providing money for a consumer to use for any purpose other than prosecuting the consumer's dispute, with repayment of the money conditioned on and derived from the consumer's proceeds of the dispute, regardless of whether these proceeds result from a judgment, settlement, or other source. In short, it is a form of lending provided to a consumer, such as a plaintiff in a lawsuit, with repayment coming from the plaintiff's recovery, if any.

Consumer lawsuit lending can result in a plaintiff paying very high effective interest rates, leaving a winning plaintiff with little financial recovery at the end of a successful suit. Typically, a plaintiff who takes out such a loan borrows a few thousand dollars but, when the money is repaid, ends up repaying a multiple of what was borrowed. As noted by the bill's authors, in a study by faculty at the Cardozo School of Law and the University of Texas School of Law, though the average amount provided to a consumer in a motor vehicle case was \$5,227, the amount due for repayment was \$13,515 (with a median amount provided was \$2,000, with the median amount due \$3,961).

In addition, the mere presence of a such a loan can needlessly prolong litigation, negatively affecting all parties to the litigation, as the plaintiff knows repayment is contingent on a judgment or settlement.

AB 858 would allow such lending to continue to occur in Wisconsin, while placing the following modest limits on the practice:

- Capping the interest rate at no more than 18 percent per year.
- Capping the fees a lender may charge.
- Requiring the transaction to be in writing.
- Allowing the consumer five days to rescind the transaction.
- Prohibiting the lender from making any decisions regarding the legal dispute, leaving any decisions regarding the litigation with the consumer and the consumer's attorney.

Testimony of Jack Kelly
American Legal Funding Association
Wisconsin State Assembly Committee on Consumer Protection
Opposition to Assembly Bill 858
February 16th, 2022

Madame Chair, committee members, thank you for allowing me to address the committee. My name is Jack Kelly. I am the Managing Director of the American Legal Finance Association (ALFA).

By way of introduction, ALFA is a trade association consisting of 32 of the nation's leading consumer legal funding companies that do business throughout the United States. One of ALFA's first actions was establishing industry standards for the Consumer Legal Funding industry. The cornerstone of these best practices is transactional transparency and clear disclosure to consumers. As a result, all ALFA members ascribe to the ALFA Best Practices.

It is critical for the committee to know that ALFA members DO NOT PROVIDE FUNDS TO INDIVIDUALS FOR ANY COSTS, FEES, OR EXPENSES RELATED TO THE PROSECUTION OF LITIGATION. Therefore, a plaintiff can SOLELY use the funds provided by ALFA member companies for their personal life needs like rent, food, or other such expenses.

ALFA outlines, and its members comply with, the following Best Practices: 1) Prohibit any of the funds being used for the costs of the litigation or attorney fees 2) Prohibit the funding company from being involved in any decisions relating to the litigation 3) Prohibit funding companies from paying any referral fees 4) Prohibit funding companies using false or misleading advertising, and 5) Require attorney acknowledgment of all fundings.

I am here today to respectfully oppose Assembly Bill 858. This bill fails to address the needs of consumers that have a personal injury claim and may need funds to provide for their basic needs such as housing and living expenses. The adoption of this bill would eliminate the ability of funding companies to assist consumers who have been injured and unable to work through no fault of their own. As written, this legislation would eliminate the option provided through Consumer Litigation Funding. Injured persons who cannot rely on family and don't have access to bank loans could face foreclosure, eviction, or loss of their possessions, such as automobiles.

I want to begin by addressing misconceptions and misstatements that have been made about the consumer legal funding industry and the notion this legislation is about consumer protection.

First, consumer legal funding does not create or increase frivolous litigation. As I stated earlier, ALFA members DO NOT provide funds unless the plaintiff has a bona fide claim and is represented by an attorney and prohibits any of the funds to be used to pay attorney fees or any cost related to their case. These cases are already filed before a plaintiff seeks funds for their personal life needs. Funding a frivolous case is against the financial interests of a consumer legal funding company as they would lose the funds they provide to the consumer.

Second, Legal Funding enables a plaintiff to provide for life needs to prevent an eviction, foreclosure, or car repossession. For example, 78% of consumer legal funding is used to avoid foreclosure, nearly 7% for auto payments, and almost 10% for food. Consumer legal funding does not fund the lawsuit or pay for class actions.

Third, consumer legal funding enables a plaintiff to get a fair settlement, not more than they deserve. A plaintiff often settles their case on the first offer simply because they have no funds to pay their basic needs. Because consumers are faced with these financial challenges, the first settlement offer is invariably a "low ball" offer. Those advocating for this legislation want to eliminate these fundings because low or unfair settlements are more profitable. These individuals cannot say they want to eliminate consumer legal funding, so they tell you that this is about consumer protection. That is not true. This legislation is a Trojan horse that looks like consumer protection but is in effect a ban of this practice that will stop consumer legal funding in Wisconsin, which will only hurt Wisconsinites. Do not be misled by those claims.

Fourth, consumer legal funding is nonrecourse, and the consumer only pays the monies back if they receive funds in their case. Consumer legal funding companies assume all the risk. These fundings are risky. 12 to 20 % of funded cases are lost or settle for substantially less than expected. If the plaintiff loses their case, the consumer owes nothing, and the legal funding company loses its money. Adjustments are made to the obligation if the case settles for substantially less than expected. A consumer cannot be required to pay back more than they receive in their case. Consumer legal funding is not a loan because a loan must be repaid. Therefore, consumer legal funding is a nonrecourse funding transaction and not a loan.

Fifth, if you adopt this legislation, Wisconsin consumers will be harmed. The proponents of this legislation will be the primary beneficiary because lowball/unfair settlements are more profitable than fair settlements. Consumer legal funding allows the consumer to get fair compensation.

If Wisconsin truly desires to create laws to provide consumer protection ALFA would welcome working with you to address your concerns. ALFA has led the charge in helping adopt sound consumer protections law in numerous states, including Indiana, Oklahoma, Utah, Nevada, Tennessee, Vermont, Ohio, Maine, and Nebraska.

So, what is so bad about this legislation? It's simple. This legislation treats nonrecourse consumer legal funding transactions as a traditional recourse loan with full obligation to repay the loan. It imposes a maximum interest rate of 18% per year for 36 months irrelevant of how long the funds may be repaid. The proponents of the legislation aim to eliminate this funding option for consumers, and they know that a rate of 18% eliminates the practice. Several years ago, West Virginia adopted this same rate. Within months of its adoption, ALFA members and other companies involved in this funding transaction stopped funding transactions in West Virginia and no longer provided funds to West Virginia consumers. The funding market was shut down, and the product in effect was prohibited.

This legislation is a lion in sheep's clothes; a Trojan horse masked as consumer protection. I ask you not to be fooled in its true intent: to eliminate these funding options for Wisconsin citizens who seek such funds to help provide a lifeline for their life needs. At the same time, they await just and equitable compensation for their injuries.

The goal of legislation in this realm should be true consumer protection – not eliminating these options altogether and preventing Wisconsinites from utilizing these funds if life needs so dictate.

I think you want true consumer protection as states like Oklahoma and Utah have adopted. As written, this legislation has one goal to shut down consumer litigation funding in Wisconsin. ALFA and our members stand ready to work with the committee to adopt true consumer protection legislation.

Consumer legal funding provides consumers with a lifeline when they have nowhere else to turn. It enables a plaintiff to obtain the settlement they deserve and not be forced to accept an unfair offer.

If you have questions or concerns about this industry, I stand ready to work with you to address those concerns.

WMC

Wisconsin's Chamber

TO: Members, Assembly Committee on Consumer Protection

FROM: Evan Umpir, Director of Tax, Transportation, and Legal Affairs

DATE: February 16, 2022

RE: Support for AB 858, Relating to: consumer lawsuit lending and providing a penalty.

Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to testify in **support of Assembly Bill (AB) 858** and thanks Representative Tusler and Senator Wimberger for introducing this bipartisan bill. WMC supports this proposal as it will **codify common-sense consumer protections and promote the natural administration of justice.**

WMC is the largest general business association in Wisconsin, representing approximately 3,800 member companies of all sizes, and from every sector of the economy. Since 1911, our mission has been to make Wisconsin the most competitive state in the nation to do business. As part of that mission WMC supports legislation, like AB 858, that seeks to ensure a properly functioning court system to ensure the proper administration of justice.

The bill before you today seeks to bring common-sense consumer protections to a currently unregulated industry in Wisconsin. Under current law, “lawsuit lending,” also known as “lawsuit financing,” “non-recourse financing,” or other synonyms, **is not regulated like other consumer transactions and lending in Chapters 421-429 of the Wisconsin Statutes (Wisconsin Consumer Act),** first enacted in 1972. Simply, lawsuit lending is a financial transaction where the lender provides money, often a small amount – the average amount is \$5,000 – to the plaintiff in a lawsuit for non-litigation expenses, such as rent or mortgage, food, bills, or other expenses.¹ **These loans are not used to pay attorney fees and in no way affects a plaintiff's ability to pursue a claim in court;** plaintiffs' attorneys typically operate on a contingent basis and only get paid if the case wins or settles. If the plaintiff receives a judgment or settlement upon resolution of the case, only then must a plaintiff repay the loan, with interest.

Unregulated Lawsuit Lending Can Harm Consumers

This arrangement, though, can cause issues for plaintiffs and prevent the legal system from functioning properly. Often times these lawsuit loans have **prohibitively high interest rates which can quickly compound and approach 200% annually.**² Consumers who took what otherwise would have been a relatively small, stopgap-type loan for certain expenses until a

¹ *Consumer vs. Commercial Legal Finance*, American Legal Finance Association (2019), available at: <https://americanlegalfin.com/wp-content/uploads/2019/06/Commercial-Litigation-Financing-Vs-Consumer-Legal-Funding.pdf>.

² Jean Xiao, *Heuristics, Biases, and Consumer Litigation Funding at the Bargaining Table*, 68 *Vanderbilt Law Review* 261, 265 (2015), available at: <https://scholarship.law.vanderbilt.edu/vlr/vol68/iss1/7>.

judgement or settlement from their lawsuit was paid, then owes well more than what was initially borrowed. **Repayment of the lawsuit loan can severely diminish, if not wipeout any financial judgment or settlement the plaintiff was entitled to from the litigation.**

Artificial Considerations Such As Financial Pressure Disrupt the Administration of Justice

Additionally, the effect of swelling interest charges can affect a plaintiff's decision about whether to settle or protract litigation hoping for a larger settlement offer or judgment. **Protracted, artificially extended litigation due to financial pressures distorts the justice system and affects defendants and the justice system as a whole.** Tort litigation aims to make an injured party whole, often through a financial judgement. The pressure to repay a lawsuit loan, plus growing interest charges, may unduly incentivize plaintiffs to extend litigation in order to obtain a larger financial settlement or judgment. Some lawsuit lenders even encourage extending litigation to obtain a larger financial settlement or judgment. For example, Thrivest Link, a Pennsylvania-based company offering "non-recourse pre-settlement funding" to individuals in Wisconsin says in its Legal Funding Guide, "[d]on't settle for a low ball offer," explaining lawsuit lending allows plaintiffs to "hold out longer."³ Indeed, it may be prudent for plaintiffs in some cases to reject a settlement and wait for another offer or go to trial, but **litigation strategy decisions should be between a client and their attorney made with a clear mind based on the merits of the claim and without the pressure of the need to repay a loan with growing, exorbitant interest.**

Not only can lawsuit lending financially affect plaintiffs, it also directly affects defendants and the justice system as a whole. **Precious court resources, most importantly docket time, are wasted** when plaintiffs artificially extend litigation. Courts are still recovering from a backlog of cases delayed due to the COVID-19 pandemic and were already stretched thin before. Not only do these cases affect the court and other cases by remaining on the docket, but the **defendants must devote additional resources to defending against the claim, even if the defendant has made a reasonable and fair offer to settle the case.**

Our adversarial justice system encourages the zealous adjudication of claims to ensure justice is served; but the financial weight on plaintiffs and costs to defendants and the court system interfere with the proper functioning of justice.

AB 858 Institutes Common-Sense Consumer Protections That Allow Lawsuit Lending

Despite the potential negative effects on plaintiffs, defendants, and the justice system, lawsuit lending can help meet immediate needs, as described above. **AB 858 provides guardrails to ensure that plaintiffs are not exploited while still allowing the industry to operate in Wisconsin.** The common-sense consumer protections in the bill include:

³ *Legal Funding Guide: A Reference Guide for Plaintiffs*, Thrivest Link, available at: <http://thrivestlink.com/wp-content/uploads/2020/02/Thrivest-Link-Legal-Funding-Guide-1.pdf>.

1. Capping interest rates at 18% per year. This interest rate is not unprecedented. Other states have similar interest rate caps, such as Arkansas, whose constitutional maximum interest rate for loans or contracts is 17%.⁴ The proposed interest rate cap of 18% is also the maximum rate for unpaid balances of \$500 or less originally instituted in the Wisconsin Consumer Act (the rate was 12% for balances of \$500 or more).⁵
2. Ensuring consumers are not required to pay back the loan if the case is not won nor pay beyond available proceeds from a settlement or judgment.
3. Requiring a written agreement containing certain information about the loan.
4. Allowing the consumer to cancel the agreement within five business days.
5. Requiring a lender to state it has no right to, and will not, make any decisions with respect to the litigation and affirming the right lies with the consumer and consumer's attorney.
6. Fixing the term of the loan at three years (36 months).
7. Ensuring the right to pre-pay the balance.
8. Capping fees charged at \$360 per year.
9. Prohibiting the payment of referral fees to attorneys or healthcare providers by the lender.

These reasonable requirements will promote transparency for, and protect, plaintiffs seeking loans. In fact, the American Legal Finance Association, an organization “committed to promoting fair, ethical, and transparent funding standards to protect legal funding consumers,” even includes in its member Code of Conduct the requirements relating to payment of referral fees and decision-making about the litigation, as well as, other provisions included in this bill.^{6,7}

Lawsuit lending may help plaintiffs with immediate costs until their cases are resolved. Unfortunately, as seen across the country and now in Wisconsin, lawsuit lending can leave consumers in a difficult financial position, costs courts and defendants time and money, and disrupts the natural administration of justice. AB 858 institutes reasonable consumer protections, including some industry best practices, which will maintain lawsuit lending as an option for consumers who need it while keeping those consumers protected and fortifying the integrity and administration of justice.

Thank you for your consideration. I am happy to answer any questions.

⁴ Ark. Const. Amendment 89, § 3.

⁵ See 1971 Wisconsin Act 239 (creating the Wisconsin Consumer Act including Wis. Stat. § 422.201 Finance charge for consumer credit transactions).

⁶ American Legal Finance Association, available at: <https://americanlegalfin.com/alfa-code-of-conduct/>.

⁷ See *Assurance of Discontinuance In the Matter of Plaintiff Support Services, Inc. et al.*, Attorney General of the State of New York (February 17, 2005), available at: <https://silo.tips/download/state-of-new-york-office-of-the-attorney-general-4>.



To: Members, Wisconsin Legislature

From: Wisconsin Manufacturers & Commerce
Alliance of Wisconsin Retailers
Great Lakes Credit and Collection Association
National Federation of Independent Business – Wisconsin
Wisconsin Grocers Association
Wisconsin Hotel & Lodging Association
Wisconsin Petroleum Marketers & Convenience Store Association

Date: February 16, 2022

Re: Oppose Costly, Patchwork Regulation Created by AB 957 & SB 957

The above group of associations encourages members of the Wisconsin State Legislature to oppose Assembly Bill 957 and Senate Bill 957 (AB/SB 957). While well-intentioned legislation, the **resulting costs of compliance, patchwork of regulations across the country, and ensuing confusion for consumers and businesses alike warrant further consideration and a national approach, not state-by state action.**

Staggering Compliance Costs Will Negatively Impact Businesses Small & Large

A report just released last month by the Information Technology & Innovation Foundation (ITIF) estimated that “state privacy laws could impose out-of-state **costs of \$98 billion and \$112 billion annually.**”¹ Further, the **cost to small businesses could be as high as \$23 billion annually.**²

In Wisconsin, complying with privacy laws across the country is estimated to cost \$2.8 billion, \$600 million of which falls on small businesses.³

As the economy still recovers from the COVID-19 pandemic and inflation is at a 40 year high of 7.5%, no business, large or small, can afford to be shouldered with the permanent costs associated with complying with a multitude of data privacy laws.

Whether it is conducting data protection assessments, hiring staff to manage compliance requirements, paying fines for violations, or potentially being dragged into litigation in another state, the time, effort, and money that could be used to hire employees or produce more products will be diverted towards complying with yet more government regulation.

A State-By-State Patchwork Is Unworkable and Confusing For Consumers and Businesses

Three states (California, Colorado, and Virginia) have passed consumer privacy laws. So far this year, 23 other states (including the District of Columbia) have pending legislation.⁴ Even minor differences in jurisdictions’ approaches to consumer privacy can have a compounding impact on effort required for compliance. **A Federal framework for an inherently interstate issue must be the solution if workable, comprehensive data privacy protections are to be enacted.**

Knowing which states do and do not have data privacy laws, and the specific requirements for compliance (for businesses) and rights (for consumers), will cause confusion. Does a consumer need to opt-in or opt-out? To what extent, and how, can a consumer limit, or delete, data? Can a consumer sue, or is enforcement a simple fine on the business for violations? All these questions, and more, will be asked by consumers and compliance staff alike for state after state. This does not include any pre-existing Federal consumer privacy regulations.

In particular, AB/SB 957 exempts certain businesses from the requirements of the bill because of pre-existing Federal laws or regulations governing consumer privacy. *See* AB/SB 957 beginning

¹ Daniel Castro, Luke Dascoli, and Gilligan Diebold, *The Looming Cost of a Patchwork of State Privacy Laws*, Information Technology & Innovation Foundation (January 24, 2022), available at: <https://itif.org/publications/2022/01/24/looming-cost-patchwork-state-privacy-laws>.

² *Id.*

³ *Id.*

⁴ *2022 State Privacy Law Tracker*, Husch Blackwell LLP, available at: <https://www.huschblackwell.com/2022-state-privacy-law-tracker>.

Oppose Costly, Patchwork Regulation Created by AB 957 & SB 957

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at page 21. The inclusion of these **exemptions show that a unified, comprehensive, Federal approach to consumer data privacy is the most prudent choice for any legislative action**, whether a blanket approach or addressing the unique situations of different industries. A Federal, comprehensive framework will ensure that all businesses are on equal, competitive footing and not disadvantaged by the patchwork of mounting compliance costs.

In addition to State and Federal regulations, **many companies and consumer-interfaces already require privacy policies**. The appearance of “Privacy Policy” or “Terms & Conditions” are nearly universal on every website. If a business has an application for a mobile device, both major application marketplace platforms **require** a privacy policy. In 2018, Apple’s App Store started requiring a privacy policy for *all* applications.⁵ Similarly, the Google Play Developer Distribution Agreement includes language that requires developers protect the “privacy and legal rights of users.”⁶

Technological innovation has revolutionized how we buy groceries, bank and pay bills, discover and view entertainment, find a ride across town or to and from the airport, order food and other goods, and much more, by providing unprecedented convenience and opportunities. **While well intentioned, state-by-state consumer privacy regulations will be cost-prohibitive for businesses and confusing for both businesses and consumers. As such, please oppose AB/SB 957.**

⁵ Benjamin Mayo, *New App Store rules will require all apps to have a privacy policy*, 9to5Mac, August 31, 2018, available at: <https://9to5mac.com/2018/08/31/new-app-store-rules-will-require-all-apps-to-have-a-privacy-policy/>.

⁶ Google Play Developer Distribution Agreement, Section 4.8, Google LLC, available at: <https://play.google.com/about/developer-distribution-agreement.html>.