



STATE SENATOR

**Eric Wimberger**

DISTRICT 30

## **Testimony on Senate Bill 842**

*Senate Committee on Judiciary and Public Safety*

*Thursday, February 17, 2022*

Madame Chair, I am pleased to come before you to testify in favor of Senate Bill 842, a consumer protection bill that has bipartisan support and co-sponsorship.

SB 842 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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# RON TUSLER

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STATE REPRESENTATIVE • 3<sup>rd</sup> ASSEMBLY DISTRICT

**Senate Bill 842**

**Senate Committee on Judiciary and Public Safety**

**Public Hearing**

**February 17, 2022**

Chair Wanggaard and fellow members of the Senate Committee on Judiciary and Public Safety: thank you for hearing this bill today. The bill before you is Senate Bill 842 (SB 842) 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 SB 842 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 Senate Committee on Judiciary and Public Safety for hearing my testimony.

2-14-22

I am Linda L. Rouse,  
I am Appleton, Wisconsin.  
I am a senior citizen and  
I don't have a lot of money.  
I applied for a loan  
from Oasis Lend. 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 caused 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 L. Rose

To: Wisconsin Senate Committee  
on Judiciary and Public Safety  
From: Wisconsin Defense Counsel  
Date: February 17, 2022  
RE: Support for Senate Bill 842



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Chairman Wanggaard and committee members,

Thank you for the opportunity to submit testimony on Senate Bill 842. The Wisconsin Defense Counsel (WDC) is a statewide organization of 500 attorneys dedicated to the defense of Wisconsin citizens and businesses and the maintenance of an equitable civil justice system. WDC members represent individuals, employers, and insurers in a variety of civil legal disputes.

WDC supports SB 842 because it provides commonsense reforms to the practice of consumer lawsuit lending. By capping annual interest rates and fees, requiring clear lending agreements with specific provisions, and prohibiting lenders from interfering with the legal process, SB 842 will help to protect consumers who need this form of financing while ensuring that claims are resolved in an equitable and timely manner.

Lawsuit loans can provide plaintiffs a means to sustain themselves financially while litigation progresses. However, they are almost entirely unregulated in Wisconsin. WDC members have reported cases where a plaintiff refused to settle because most or all of the settlement would have gone towards repaying a lender. Indeed, lawsuit loans often have confusing terms and very high effective interest rates, meaning that borrowers with successful cases may be on the hook for several times the original loan.

Yesterday, WDC member attorney Steven Snedeker testified about his experiences with lawsuit lending before the Assembly Committee on Consumer Protection. He told the committee about a lawsuit he defended in which the plaintiff, whose case was not certain to prevail, had taken out a large lawsuit loan. The size and terms of the plaintiff's loan made it impossible to reach a settlement with him, such that the case was litigated all the way to the appellate level before finally being dismissed.

Even though the plaintiff did not have to repay the loan because his case was not successful, the loan created significant costs for other actors in the legal system. When cases that could be settled are prolonged needlessly, it consumes the limited time and resources of the courts, as well as attorneys, insurers, and other professionals. It also contributes to a general inflation of the cost of legal services.

Steven has also seen these loans work as intended, as when he represented a plaintiff who needed to pay bills while his lawsuit was resolved. Steven connected his client with a local lawsuit lender run by retired Wisconsin attorneys who reviewed the case and offered an interest rate comparable to the average credit card at the time. Nothing in SB 842 would prevent plaintiffs from obtaining reasonable loans from responsible lenders.



# WISCONSIN CIVIL JUSTICE COUNCIL, INC.

*Promoting Fairness and Equity in Wisconsin's Civil Justice System*

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**To:** Chairperson Wanggaard  
Members, Senate Committee on Judiciary and Public Safety  
**From:** R.J. Pirlot, Executive Director  
**Date:** February 17, 2022  
**Re:** Please Support SB 842 – 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 Senate Bill 842 authored by Sens. Wimberger & Roys and Reps. Tusler & McGuire.**

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.

SB 842 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.



# 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  
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*Wisconsin Restaurant Association*

# WMC

Wisconsin's Chamber

**TO:** Members, Senate Committee on Judiciary and Public Safety

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

**DATE:** February 17, 2022

**RE:** Support for SB 842, Relating to: consumer lawsuit lending and providing a penalty.

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Wisconsin Manufacturers & Commerce (WMC) appreciates the opportunity to testify in **support of Senate Bill (SB) 842** and thanks Senator Wimberger and Representative Tusler 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 SB 842, 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.<sup>1</sup> **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.**<sup>2</sup> Consumers who took what otherwise would have been a relatively small, stopgap-type loan for certain expenses until a

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<sup>1</sup> *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>.

<sup>2</sup> 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 settlement or 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."<sup>3</sup> 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.

### *SB 842 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. **SB 842 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:

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<sup>3</sup> *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%.<sup>4</sup> 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).<sup>5</sup>
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.<sup>6,7</sup>

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. **SB 842 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.

<sup>4</sup> Ark. Const. Amendment 89, § 3.

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

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

<sup>7</sup> 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>.

Testimony of Jack Kelly  
American Legal Funding Association  
Wisconsin State Senate Committee on Judiciary & Public Safety  
Opposition to Senate Bill 842  
February 17th, 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 Senate Bill 842. 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.