

Testimony of Gail Markels  
Executive Director of ALFA  
Committee on Banks  
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Chairman Duff, Chairman Tong and Members of the Committee on Banks, I would like to thank you for the opportunity to testify in opposition to CT HB 5419. My name is Gail Markels. I am here today on behalf of the American Legal Finance Association (ALFA), where I serve as its Executive Director.

By way of introduction, ALFA, is a group of 30 civil litigation funding companies doing business across the United States. One of ALFA's first actions in 2005 was to establish industry standards in the Legal Funding industry, especially regarding transparency in transactions and clear disclosure to consumers.

ALFA Best Practices include requiring 1) Attorney Acknowledgment of the lien 2) No interference by the funding company with the underlying case, 3) No referral fees, 4) No false or misleading advertising, 5) Not overfunding case in excess of consumer's needs.

I am here today to oppose HB 5419, a bill that incorrectly defines Legal Funding as a loan and imposes 12 % rate caps. If enacted, HB 5419 would make it impossible to provide Legal Funding in CT and as a result, consumers waiting for their case to be resolved and in need of financial assistance, will have nowhere to turn for help.

Because of losses in excess of 15 to 20% and the high cost of capital, the Legal Funding industry Could Not survive with 12% rate caps. HB 5419 would hurt consumers who have been injured and unable to work through no fault of their own. Without the lifeline provided by Legal Funding, consumers who cannot rely on family and can't get bank loans will face foreclosure, eviction or repossession of their cars.

I would like to address misconceptions/misstatements that have been made about the Legal Funding industry.

First, legal funding does not create/increase frivolous litigation. ALFA members Do Not provide funding unless the plaintiff has a bona fide claim and is represented by an attorney. Funding a frivolous case is against the financial interests of the Legal Funding Company as they would risk losing the amount of the funding.

Second, Legal Funding enables a plaintiff to provide for life needs, to prevent an eviction, foreclosure or car repossession. 78% of Legal Funding are used to prevent foreclosure and nearly 7% for cars, and almost 10% for food. Legal Funding does not fund the expense of the lawsuit or pay for class actions. You will hear how Legal Funding helped Timothy Hillick, a resident of Glastonbury who was injured in the Middleton Power Plant explosion.

Third, Legal Funding enables a plaintiff to get a fair & equitable settlement, not more than they deserve. It lets the plaintiff avoid the first offer, which will invariably be low. Groups like the insurance industry support HB 5419 because low or unfair settlements are more profitable. The insurance industry cannot say they support unfair settlements, so they are telling you consumer legal funding creates frivolous litigation. That is not true. Do not be fooled.

Let's look at a typical case. Without Legal Funding a consumer settles for \$50k within 6 months, after paying the lawyer \$16,666, the consumer receives \$33,334.

A consumer receives Legal Funding in the amount of \$ 3000.00 at a rate of 3% a month which allows the consumer to stay in the case and get a fair settlement. Here the consumer settles for \$100k after 1 year. The consumer receives \$61,887, the attorney receives \$33,333, and the Legal Funding company \$4,780. Legal Funding allows the consumer to receive nearly twice than if they had to settle the case earlier due to financial issues.

Legal Funding allows the consumer to get a fair settlement.

Fourth, legal funding is Non Recourse and is not a loan. Because legal funding is non recourse it does not have to be repaid if the consumer loses their case or the case settles for substantially less than expected. Legal Funding is risky with 15 to 20 % of funded cases losing money or settling for substantially less than expected. If the plaintiff loses their case, the consumer owes nothing. If the case settles for less than expected, adjustments are made. These losses and adjustments combined with the cost of capital and administrative costs result in fees that are higher than rates associated with traditional loans. Legal Funding is not a loan because a loan must be repaid. Legal Funding is nonrecourse

Because of these losses and adjustments, the cost of capital and administrative costs, a 12% rate cap would make it impossible for the Legal Funding industry to take the risk of providing Legal Funding.

Sixth, Legal Funding is not Pay Day Lending which results in an endless cycle of pay day loans. Legal Funding is tied to a one-time occurrence and the fees are paid out of the proceeds of the settlement. If there is no settlement, the consumer owes nothing.

#### Conclusion

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.