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By Siobhan Briley

The Illusion of a Ban: Statutory Ambiguities, Defense Strategies, and Workarounds under N.C. Gen. Stat. §§ 66-511 et seq.

On June 22, 2026, North Carolina passed the “Prohibiting Litigation Investments Act” (the “Act”), the nation’s first law banning third-party litigation financing. The Act took effect on July 1, 2026, and is codified in Chapter 66 of the General Statutes at N.C. Gen. Stat. §§ 66-511 et seq.

The policy behind the Act, articulated in an earlier version of the bill but eliminated from the final version, is to ensure legal claims and courthouses in North Carolina are not and do not become “a financial market for investments and are not vehicles for third parties to profit by financing a party to a civil proceeding for the purpose of obtaining and maximizing an investment return.” H.B. 315, N.C. Gen. Assemb., Reg. Sess. (2025).

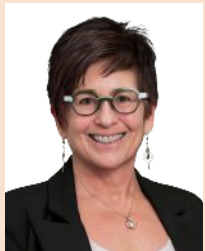
SUMMARY OF THE ACT

The Act makes it “unlawful for a person to engage in litigation

investment in [North Carolina] or to furnish litigation investment to party or counsel of record in a civil proceeding in” the State. N.C. Gen. Stat. § 66-513.

“Civil proceeding” is broadly defined to include not only court proceedings but “arbitration, mediation, administration proceeding[s],” and any other proceedings to resolve a civil legal claim. *Id.* § 66-512(1).

“Litigation investment” is also broadly defined as “[t]he provision of money, whether as a direct payment, advancement, loan, investment, or otherwise, for the fees, costs, and expenses of or related to a pending or potential civil proceeding in exchange for repayment or other consideration that is contingent in any respect on the outcome of that proceeding.” *Id.* § 66-512(3). The definition explicitly excludes various other funding arrangements, such as contingency fee agreements and traditional



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loans, as discussed below. *Id.* § 66-512(3)(a)-(i).

Under the Act, any contract entered into “in violation of this Article is void.” *Id.* § 66-514(a). The N.C. Attorney General may sue to enjoin violations of the Act, and private citizens who have been “injured” may sue for damages. *Id.* § 66-514(b), (c).

In an action brought by the Attorney General, the court may also “impose a civil penalty of up to ... \$50,000 for each violation[.]” *Id.* § 66-514(b). Private citizens are “entitled to elect at judgment between common law damages as measured by the trier of fact and statutory damages as measured by treble the amount of the full potential litigation investment contemplated by the investor[.]” plus reasonable attorney’s fees and costs. *Id.* § 66-514(c). These remedies and penalties are in addition “to any other remedies provided for by law.” *Id.* § 66-514(e).

Finally, “a person that engaged in the business of litigation investment or furnishing litigation investment” in North Carolina “has purposefully availed itself of the privileges of conducting business in this State” and therefore submitted to personal jurisdiction in North Carolina. *Id.* § 66-514(d).

Interestingly, the Act also amends the Workers’ Compensation Act, N.C. Gen. Stat. §§ 97-1 *et seq.* by raising the minimum weekly compensation payable to an employee who qualifies for total disability from \$30 to \$50 and increasing the compensation to be paid during the healing period for certain injuries. This inclusion suggests political horse-trading to gain support for the Act from the plaintiffs’ bar, which has lobbied for years for increases to scheduled

Workers Compensation limits.

HOW WILL THE ACT BE EFFECTIVE?

First, because the Act defines “civil proceeding” broadly, it will prevent funders from getting around the law by offering funding for alternative dispute resolution rather than litigation. See *id.* § 66-512(1).

Second, the Act might immediately reduce the availability of litigation funding in North Carolina. Despite the workarounds discussed below, some funders are likely to decide not to enter (or renew or amend) litigation financing agreements in North Carolina given the risks. Even those funders who are willing to risk an enforcement action by the Attorney General or a private suit for treble damages might not be willing to submit to personal jurisdiction in North Carolina or subject themselves to interference with their contracts by defense counsel through aggressive discovery or injection into the attorney-client relationship when they discover a “litigation investment.”

Third, the Act could force funders to redesign products to fit statutory exceptions, such as reducing the repayment amount to “the original amount [loaned] plus reasonable interest[.]” potentially resulting in less onerous repayment terms. *Id.* §§ 66-512(3)(d), (e). Many consumer litigation funding agreements require repayment of 200% or more of the amount advanced if the case is resolved within a relatively short period (e.g., 18 months), with the repayment amount increasing sharply the longer the litigation continues. Most also cap repayment at the amount of the plaintiff’s net recovery. While this appears to protect plaintiffs from owing money when

the case is over, it deprives them of compensation for their injuries after the funder, fees, costs, and medical liens have paid.

WHAT ARE THE ACT’S PRIMARY VULNERABILITIES?

1. THE “REASONABLE INTEREST” REQUIREMENT

The most obvious loophole is the Act’s failure to define “reasonable” interest. See *id.* North Carolina allows parties to a loan agreement “other than a credit card, open-end, or similar loan” to agree to “[a]ny rate ... where the principal amount is more than” \$25,000. N.C. Gen. Stat. § 24-1.1(a)(2). The lack of any meaningful constraint on interest rates offers funders a major loophole: rather than calculating the repayment amount as a multiple of the principal, funders could structure agreements with stair-step interest increases the longer the principal remains outstanding, vitiating the protection of a cap on the repayment amount currently incorporated into most litigation funding contracts.

2. THE PERSONAL-AND-HOUSEHOLD-EXPENSE LOOPHOLE

The second most obvious loophole is the exclusion for “[t]he provision of money or other financial support to a party for personal and household expenses during the pendency of a civil proceeding so long as the money or financial support is not used for the fees, costs, and expenses of the civil proceeding.” N.C. Gen. Stat. § 66-512(3) g. The emphasized condition—“so long as the funds are not used for litigation expenses”—permits a funder to provide money for rent, groceries, utilities, medical bills,

childcare, or other household needs during litigation, even if repayment is contingent on the case outcome, provided the funds are not themselves used to pay litigation expenses. It is difficult to see how this distinction can be enforced. A plaintiff who receives a household-expense advance can use the advance for *all* their living expenses, allowing them to redirect their personal funds toward litigation costs. Unless the Act is interpreted to look beyond source-of-funds tracing, this exclusion could preserve a large portion of the consumer litigation-finance market.

In addition, plaintiffs will remain exposed to high-cost capital as funders find more creative ways to structure agreements to preserve higher repayment amounts the longer the litigation continues. Rather than becoming less expensive, the litigation funding market may just become less transparent.

3. THE IMMEDIATE-FAMILY EXCEPTION

The third major exception is the exclusion of an immediate family member's provision of financial support to a party (for any purpose) during the pendency of a civil proceeding, "regardless of whether the immediate family member receives a right to any portion of the judgment, settlement, or other monetary relief the party recovers" or any other repayment right contingent on the outcome. N.C. Gen. Stat. § 66-512(3)(i). This language creates another sanctioned end-around.

A funder that cannot lend directly to the plaintiff on outcome-contingent terms may be able to lend to a family member, who then provides funds to the plaintiff. Willing family members may become financial conduits,

allowing funders to circumvent the Act's prohibitions.

4. THE NONPROFIT EXCEPTION

The Act also excludes certain funding to or by nonprofit organizations and nonprofit legal-services organizations, provided any repayment amount is limited to the original amount plus reasonable interest. N.C. Gen. Stat. § 66-512(3)(d)-(e). In a market where credit card interest rates are routinely over 20%, and often close to 30%, "reasonable" is likely to include a broad range of rates, and funders will have a viable argument that a similar or even higher rate is commercially reasonable for a risky, nonrecourse litigation-related advance.

In addition, the nonprofit exception could also invite creative funding structures, such as routing funds through or alongside a nonprofit entity where the nonprofit originates the compliant "reasonable interest" loan, but a commercial third-party funder charges massive, back-end administrative or servicing fees to extra the true economic upside. Regulators and courts will need to decide whether such structures are legitimate access-to-justice mechanisms or devices to launder prohibited litigation investments through nonprofit channels.

5. WHO IS AN "INJURED PERSON"?

The Act authorizes relief for a "person injured" by a violation, but it fails to state who qualifies as "injured." This omission could generate satellite litigation on who, besides plaintiffs who enter into prohibited funding agreements, may claim injury from an unlawful contract. Defendants may claim injury due to prolonged litigation,

artificially bloated settlement demands, or forced the defense to incur substantial fees fighting a weak claim that, without funding support, would have collapsed. But establishing a factual basis for these arguments will be difficult.

In addition, defendants will have to convince the court that the Act was intended to protect *defendants* as well as consumer *borrowers*. This may be difficult because establishing standing requires showing that the plaintiff belongs to the specific "designated class of person" the legislature intended to protect, and the Act provides no clear direction in this regard.

6. JURISDICTIONAL CHALLENGES ARE LIKELY

The Act provides for "special jurisdiction" over litigation funders by virtue of executing a litigation funding agreement. *Id.* § 66-514(d). Although a state may generally regulate conduct sufficiently connected to litigation in its courts, the wording of the Act leaves open the possibility that funders could be haled into court in North Carolina for conduct to provision of funding, on a theory that the Act confers general jurisdiction. *Id.* ("a person that has engaged in the business of litigation investment or furnished litigation investment to a party or counsel of record in a civil proceeding in this State has purposefully availed itself of the privileges of conducting business ... and is subject to suit in this State"). Funders are sure to challenge personal jurisdiction in North Carolina where such jurisdiction is based on the Act.

TENSION BETWEEN THE MANDATE TO LIBERALLY CONSTRUE THE ACT

AND CIVIL PENALTIES

The Act mandates that liberal construction “to effectuate its purpose.” *Id.* § 66-515. It also imposes heavy civil penalties and treble statutory damages. See *id.* § 66-514(b). Together, these provisions create an inherent legal tension because, traditionally, courts have been required to construe statutes imposing civil penalties and treble damages narrowly in favor of the accused.

How courts approach the internal tension in the Act is particularly significant because the treble damages provision permits courts to award “treble the amount of the *full potential litigation investment* contemplated by the investor[,]” even if the plaintiff has not received the entire investment amount. *Id.* § 66-512(3) (emphasis added). This asymmetric liability structure transforms the Act from a standard regulatory hurdle into an existential financial threat. It offers a massive bounty, encouraging defendants to unearth prohibited funding vehicles and engage in satellite litigation driven by high-stakes financial opportunism rather than simple resolution.

CONCLUSION

The Act may turn out to be significant development, but its practical effect will depend on how courts, regulators, funders, and plaintiffs treat the exclusions. The Act clearly prohibits classic outcome-contingent funding for litigation fees and costs. But it leaves open numerous other arrangements that may reproduce many of the same economic incentives. Before its full impact is known, North Carolina courts will have to address the loopholes and answer the questions left open by the Act.

