

The Rules are Finally Catching up with **Third-Party** Litigation Funding

Third-party litigation funding (TPLF) has quietly reshaped how bodily injury claims move toward settlement. The concept is fairly simple, with a nonparty lender advancing money to a plaintiff or a plaintiff's law firm in exchange for a cut of the eventual recovery. The effects on claim outcomes, however, are not as simple, and a wave of new state and federal legislation is now trying to bring some structure to a market that has operated with almost no oversight.





Why this matters for claims

TPLF shows up in two common forms:

- Plaintiffs who cannot work because of an injury that did not happen on the job, and who have no workers' compensation claim, sometimes borrow against a future settlement just to cover daily living expenses.
- Smaller plaintiff firms facing a large, long-tail case may borrow to fund years of court costs and expert fees.

Either way, the loan is unregulated and the interest can be steep, often compounding for years before a case resolves. This can create a real problem at the negotiation table. For example, a carrier might value a case at \$500,000. But by the time the attorney's contractual fee and litigation costs are subtracted, along with a loan that has ballooned from \$150,000 to \$250,000, the plaintiff may walk away with \$50,000 or less.

Before accepting any offer, claimants often ask how much money they will actually receive from a possible settlement. When the answer is a fraction of the headline number, cases that should settle reasonably may instead stall, drag through litigation and increase defense costs.

What the new laws do

Historically, defense counsel and carriers had no right to know if a funding agreement existed, but that is changing fast. Legislation enacted across more than a dozen states in 2024 through 2026 tends to fall into a few recurring categories:



Disclosure requirements: States including Montana, Wisconsin, West Virginia, Georgia and Louisiana now require funding agreements to be produced to the court, opposing parties or an insurer with a duty to defend. Kansas takes a narrower path, allowing in-camera (allowing a judge to review evidence privately) judicial review, rather than automatic production.



Control restrictions: Arizona, Colorado and Ohio, as well as the Louisiana and federal proposals, bar funders from directing strategy, choosing counsel experts or vetoing a settlement. The goal is to keep decision-making with the claimant and their attorney rather than an outside investor.



Foreign funding limits: Arizona, Colorado, Georgia, Louisiana and Oklahoma restrict or require disclosure of funding tied to foreign entities of concern, reflecting national security concerns that have entered the debate alongside the consumer protection angle.



Recovery caps:

- Montana caps a funder's take at 25% of the settlement
- New York applies a percentage cap through its consumer funding framework
- North Carolina goes further, banning outcome contingent funding for case costs outright that is subject to specific exclusions

At the federal level, the proposed Litigation Funding Transparency Act of 2026 (S. 3826) would require disclosure of funder identity and foreign ties, impose a continuing duty to correct inaccuracies and bar funders from influencing strategy or settlement. The Act remains in the Senate Judiciary Committee as of now. Congress has also floated an excise tax on litigation-funding returns, which would cut into the profitability that currently makes TPLF an attractive untaxed investment.

What to watch

None of this resolves the underlying tension between access to justice and litigation transparency overnight. Supporters of TPLF argue it levels the field for claimants facing well-sourced defendants. Critics argue undisclosed financing extends claim duration, inflates the minimum number a plaintiff will accept and exposes strategy to outside parties.

Because most of these statutes only recently took effect, closed claim data has not yet caught up. It will likely take at least three to four years of claims experience before the impact on severity, duration, defense costs and net recovery claimants can credibly be measured. In the meantime, disclosure alone will not lower compensatory damages; however, it should improve reserve accuracy and help give carriers a clearer picture of who actually holds a stake in each settlement.

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