



# Lawsuit Reform Alliance of New York

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## SUPPORT

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| <b>BILL:</b>    | <b>S.705 (Kaplan)</b>  |
| <b>SUBJECT:</b> | <b>Regulation of lawsuit lending March</b>   |
| <b>DATE:</b>    | <b>January 5, 2021</b>   |
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### **Summary:**

This legislation would create specific guidelines to regulate the third party litigation financing industry, commonly known as “lawsuit lending.” This industry is currently not regulated in New York and recent media reports have highlighted predatory lending practices within this emerging sector. These firms provide plaintiffs with up front financing during pending litigation. The bill identifies and defines these companies and enacts provisions for the registration of such entities with the state. Additionally, in order to protect consumers from predatory usurious interest rates of 36% or higher and other unfair business practices, including conflicts of interest between attorneys and lenders, this bill outlines consumer protection requirements for lawsuit lending contracts.

### **Why we support this legislation:**

#### ***Regulating lawsuit lending protects consumers***

- Lenders claim that because repayment is contingent on the borrower winning the case, the product they offer is especially risky and should not be classified as a loan. This allows them to charge outrageous interest rates, well beyond those allowed under New York’s consumer-protection law. But data shows that the level of risk is lower than that for other consumer loans. A study published last year in the *Vanderbilt Law Review* found that 84% of claims filed in New York’s state courts are settled.<sup>1</sup> Another study, authored by a consultant for the lending industry and soon to be published by *Cornell Law*, found just a 10% rate of default.<sup>2</sup> This illustrates a very low level of risk as the current rate of default for student loans is around 13%.<sup>3</sup> As lawsuit lending remains unregulated, lenders are free to charge rates that reportedly top 100%.<sup>4</sup> **In one illustrative example, LawBuck\$ and MFL Case Funding are demanding \$2.1 million to repay loans of just \$21,300 from the estate of now-deceased Brooklyn resident Theresa Guss.**<sup>5</sup>

#### ***Defends the integrity of the civil justice system***

- The practice of lawsuit lending can create conflicts of interests for plaintiffs’ lawyers as they may develop referral relationships with certain lawsuit lenders and be expected to “steer” clients to those companies. This legislation would contractually prohibit attorneys from receiving referral fees from a lending company in connection with a plaintiff’s funding.

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<sup>1</sup> Helland, E. et al., *Contingent Fee Litigation in New York City*, 70 VAND. L. REV. 1971, 1982 (2017).

<sup>2</sup> Avraham, R. & Sebok, A., *An Empirical Investigation of Third Party Litigation Funding*, 104 CORNELL L. REV. (forthcoming).

<sup>3</sup> Scott-Clayton, J., *The looming student loan default crisis is worse than we thought*. BROOKINGS INST. (2018)

<sup>4</sup> Goldstein, M. & Silver-Greenberg, J., *How the Finance Industry Is Trying to Cash In on #MeToo*. NEW YORK TIMES. (Jan. 29, 2018)

<sup>5</sup> Marsh, J., *Lenders ‘lien’ on dead gal: \$2M for 21G loan*. NEW YORK POST. (April 23, 2018)