

S.4146 (Cooney)/A.115 (Magnarelli)

STAFF CONTACT : Paul Zuber | Executive Vice President | 518.694.4463

BILL S.4146 (Cooney)/A.115 (Magnarelli)
SUBJECT Lawsuit Lending Reform
DATE May 19, 2023
SUPPORT

The Business Council strongly supports S.4146 (Cooney)/A.115 (Magnarelli), which would set forth required contract and disclosure requirements to ensure that consumers of lawsuit lending are fully aware of the proposed transaction and ends usurious lending rates by these lenders.

The bill imposes a cap on interest at 25%. A ten-day right of rescission is also included to further protect the consumer. The bill also provides that litigation finance

companies must submit a registration application containing all the information that the Department of State needs to evaluate the character, fitness and financial stability of the applicant. Such application must include a suitable bond and be approved by the Department prior to a certificate of registration being issued.

The Business Council believes that this legislation will be helpful in curbing business costs driven by state policy actions and New York's profoundly litigious environment. New York has a vast array of laws making it advantageous to be a plaintiff and a plaintiff's attorney at the expense of defendants. Since businesses are so often the defendants in lawsuits, this paradigm leads to higher risks and higher costs of doing business in New York.

The proliferation of third-party lawsuit lenders, a cottage industry that has developed offering non-recourse lawsuit loans, loaned at exorbitant interest rates for common tort claims, often leave a consumer plaintiff with little or no money at the completion or settlement of their lawsuit. Until now, these lenders have been able to circumvent regulation and usury laws because the loans are contingent on the plaintiff winning or successfully settling a case. It's also difficult to fully quantify the impact and pervasiveness of the problem because such pre-settlement loans need not be filed in court and as a result – no public record of these loans exist. That said, these loans have a profound negative impact on our legal system and on the very plaintiffs that they purport to help.

Instead of truly helping plaintiffs in need, these third party lenders prey on the most vulnerable people with aggressive advertising on television and the internet, much like other “get rich schemes,” psychic readers and class action lawsuits. The advertising offers quick cash with no mention of triple digit interest rates. Many plaintiffs are left with almost nothing of their awards or settlements after paying back these usurious loans. Such a reality, once realized by a plaintiff, also has repercussions on the outcome of the lawsuits themselves.

As plaintiffs become aware of the massive amounts of money owed to these lenders, the plaintiffs, in an effort to salvage any chance of substantial monetary awards reaching their pockets, are forced to reject reasonable settlement offers and instead, “swing for the fences” and go to trial to reach an amount high enough to repay their loans and have a little left over for themselves.

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This shift away from reasonable settlements greatly and needlessly increases litigation costs for businesses across New York. As a direct result of this lending, settlement discussions are often upended. This push toward litigation further crowds already stressed court dockets and slows down the process for all cases, taking up valuable court time and judicial resources.

For these reasons The Business Council strongly supports the enactment of S.4146 (Cooney)/A.115 (Magnarelli).

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Business Council Headquarters

111 Washington Avenue, Suite 400
Albany, New York 12210
518.465.7511 or 800.358.1202

Business Council Insurance Fund

12 Corporate Woods Blvd., Suite 17
Albany, New York 12211-2390
518.465.1571 or 800.692.5483

Council Finance & Membership

12 Corporate Woods Blvd., Suite 17
Albany, New York 12211-2390
518.465.7511 or 800.358.1202



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