



January 29, 2024

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## HOUSE BILL No. 1160

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DIGEST OF HB 1160 (Updated January 29, 2024 11:18 am - DI 151)

**Citations Affected:** IC 24-12.

**Synopsis:** Civil proceeding advance payment contracts and commercial litigation financing. Prevents a CPAP provider from making any decision, having any influence, or directing the consumer claimant or the consumer claimant's attorney with respect to the conduct of the underlying civil proceeding. Provides that a commercial litigation financier may not provide funding to a commercial litigation financing agreement that is financed by a foreign person. Prevents a party from sharing certain privileged information with a commercial litigation financier. Provides that a commercial litigation financier may not make any decision, have any influence, or direct the plaintiff with respect to the underlying civil proceeding. Specifies that a commercial litigation financing agreement is subject to discovery.

**Effective:** July 1, 2024.

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## Lehman

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January 8, 2024, read first time and referred to Committee on Judiciary.  
January 29, 2024, amended, reported — Do Pass.

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HB 1160—LS 6780/DI 149





January 29, 2024

Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

## HOUSE BILL No. 1160

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 24-12-3-1, AS AMENDED BY P.L.85-2017,  
2 SECTION 97, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2024]: Sec. 1. A CPAP provider may not do any of the  
4 following:  
5 (1) Pay or offer to pay a commission, referral fee, or other form of  
6 consideration to any attorney, law firm, medical provider,  
7 chiropractor, or physical therapist, or any of their employees for  
8 referring a consumer claimant to the provider.  
9 (2) Accept a commission, referral fee, rebate, or other form of  
10 consideration from an attorney, law firm, medical provider,  
11 chiropractor, or physical therapist, or any of their employees.  
12 (3) Intentionally advertise materially false or misleading  
13 information regarding the CPAP provider's products or services.  
14 (4) Refer, in furtherance of an initial CPAP transaction, a  
15 consumer claimant or potential consumer claimant to a specific  
16 attorney, law firm, medical provider, chiropractor, or physical  
17 therapist, or any of their employees. However, if a consumer

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1 claimant needs legal representation, the CPAP provider may refer  
2 the person to a local or state bar association referral service.

3 (5) Knowingly provide funding to a consumer claimant who has  
4 previously assigned or sold a part of the consumer claimant's right  
5 to proceeds from the consumer claimant's civil proceeding  
6 without first making payment to or purchasing a prior unsatisfied  
7 CPAP provider's entire funded amount and contracted charges,  
8 unless a lesser amount is otherwise agreed to in writing by the  
9 prior CPAP provider. However, multiple CPAP providers may  
10 agree to provide a CPAP transaction to a consumer claimant  
11 simultaneously if the consumer claimant and the consumer  
12 claimant's attorney consent to the arrangement in writing.

13 (6) ~~Receive any right to~~ Make any decision, **have any influence,**  
14 **or direct the consumer claimant or the consumer claimant's**  
15 **attorney** with respect to the conduct of the underlying civil  
16 proceeding or any settlement or resolution of the civil proceeding,  
17 or make any decision with respect to the conduct of the  
18 underlying civil proceeding or any settlement or resolution of the  
19 civil proceeding. The right to make these decisions remains solely  
20 with the consumer claimant and the attorney in the civil  
21 proceeding.

22 (7) Knowingly pay or offer to pay for court costs, filing fees, or  
23 attorney's fees either during or after the resolution of the civil  
24 proceeding, using funds from the CPAP transaction.

25 SECTION 2. IC 24-12-11 IS ADDED TO THE INDIANA CODE  
26 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
27 JULY 1, 2024]:

28 **Chapter 11. Commercial Litigation Financing**

29 **Sec. 1. The following definitions apply throughout this chapter:**

30 (1) **"Commercial litigation financier"** means a person that  
31 enters into, or offers to enter into, a commercial litigation  
32 financing agreement with a plaintiff in a civil proceeding.

33 (2) **"Commercial litigation financing agreement"** means a  
34 nonrecourse agreement that a commercial litigation financier  
35 enters into, or offers to enter into, to provide funding to  
36 support a plaintiff or the plaintiff's attorney in prosecuting  
37 the civil proceeding, if the repayment of the funded amount is:

38 (A) required only if the plaintiff prevails in the civil  
39 proceeding; and

40 (B) sourced entirely from the proceeds of the civil  
41 proceeding, whether the proceeds result from a judgment,  
42 a settlement, or some other resolution.



1           **The term does not include a civil proceeding advance payment**  
 2           **transaction, an agreement between an attorney and a client**  
 3           **for the attorney to provide legal services on a contingency fee**  
 4           **basis or to advance the client's legal costs, a health insurance**  
 5           **plan or agreement, a repayment agreement of a financial**  
 6           **institution if repayment is not contingent upon the outcome of**  
 7           **the civil proceeding, or a funding agreement to a nonprofit**  
 8           **organization that seeks injunctive relief in a civil proceeding.**

9           **(3) "Foreign person" means:**

10           **(A) an individual that is not a citizen of the United States**  
 11           **or an alien lawfully admitted for permanent residence of**  
 12           **the United States;**

13           **(B) an unincorporated association, of which a majority of**  
 14           **members are not citizens of the United States or aliens**  
 15           **lawfully admitted for permanent residence in the United**  
 16           **States;**

17           **(C) a corporation that is not incorporated in the United**  
 18           **States;**

19           **(D) the government, a political subdivision, or a political**  
 20           **party of a country other than the United States;**

21           **(E) an entity that is organized under the laws of a country**  
 22           **other than the United States;**

23           **(F) an entity that has a principal place of business in a**  
 24           **country other than the United States and that has shares or**  
 25           **other ownership interest held by the government or a**  
 26           **government official of a country other than that of the**  
 27           **United States; and**

28           **(G) an employee, official, or member of any entity**  
 29           **described in clauses (B) through (F).**

30           **Sec. 2. A commercial litigation financier may not provide**  
 31           **funding to a commercial litigation financing agreement that is**  
 32           **directly or indirectly financed by a foreign person.**

33           **Sec. 3. A party may not disclose or share:**

34           **(1) privileged or confidential materials;**

35           **(2) proprietary information;**

36           **(3) trade secrets; or**

37           **(4) any other documents or information subject to a court**  
 38           **order to seal or protect;**

39           **that is received in the course of the civil proceeding with a**  
 40           **commercial litigation financier.**

41           **Sec. 4. A commercial litigation financier may not make any**  
 42           **decision, have any influence, or direct the plaintiff or the plaintiff's**



1 attorney with respect to the conduct of the underlying civil  
2 proceeding or any settlement or resolution of the civil proceeding,  
3 or make any decision with respect to the conduct of the underlying  
4 civil proceeding or any settlement or resolution of the civil  
5 proceeding. The right to make these decisions remains solely with  
6 the plaintiff and the plaintiff's attorney in the civil proceeding.

7 Sec. 5. In a civil proceeding in which a plaintiff enters into a  
8 commercial litigation financing agreement, the existence and  
9 contents of the commercial litigation financing agreement are  
10 subject to discovery under the Indiana Rules of Trial Procedure  
11 by:

- 12 (1) a party other than the plaintiff; or  
13 (2) an insurer that has a duty to defend another party in the  
14 civil proceeding.



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1160, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, delete lines 25 through 42, begin a new paragraph and insert:

"SECTION 2. IC 24-12-11 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:

**Chapter 11. Commercial Litigation Financing**

**Sec. 1. The following definitions apply throughout this chapter:**

(1) "Commercial litigation financier" means a person that enters into, or offers to enter into, a commercial litigation financing agreement with a plaintiff in a civil proceeding.

(2) "Commercial litigation financing agreement" means a nonrecourse agreement that a commercial litigation financier enters into, or offers to enter into, to provide funding to support a plaintiff or the plaintiff's attorney in prosecuting the civil proceeding, if the repayment of the funded amount is:

(A) required only if the plaintiff prevails in the civil proceeding; and

(B) sourced entirely from the proceeds of the civil proceeding, whether the proceeds result from a judgment, a settlement, or some other resolution.

The term does not include a civil proceeding advance payment transaction, an agreement between an attorney and a client for the attorney to provide legal services on a contingency fee basis or to advance the client's legal costs, a health insurance plan or agreement, a repayment agreement of a financial institution if repayment is not contingent upon the outcome of the civil proceeding, or a funding agreement to a nonprofit organization that seeks injunctive relief in a civil proceeding.

(3) "Foreign person" means:

(A) an individual that is not a citizen of the United States or an alien lawfully admitted for permanent residence of the United States;

(B) an unincorporated association, of which a majority of members are not citizens of the United States or aliens lawfully admitted for permanent residence in the United States;

(C) a corporation that is not incorporated in the United



States;

(D) the government, a political subdivision, or a political party of a country other than the United States;

(E) an entity that is organized under the laws of a country other than the United States;

(F) an entity that has a principal place of business in a country other than the United States and that has shares or other ownership interest held by the government or a government official of a country other than that of the United States; and

(G) an employee, official, or member of any entity described in clauses (B) through (F).

**Sec. 2. A commercial litigation financier may not provide funding to a commercial litigation financing agreement that is directly or indirectly financed by a foreign person.**

**Sec. 3. A party may not disclose or share:**

(1) privileged or confidential materials;

(2) proprietary information;

(3) trade secrets; or

(4) any other documents or information subject to a court order to seal or protect;

that is received in the course of the civil proceeding with a commercial litigation financier.

**Sec. 4. A commercial litigation financier may not make any decision, have any influence, or direct the plaintiff or the plaintiff's attorney with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding, or make any decision with respect to the conduct of the underlying civil proceeding or any settlement or resolution of the civil proceeding. The right to make these decisions remains solely with the plaintiff and the plaintiff's attorney in the civil proceeding.**

**Sec. 5. In a civil proceeding in which a plaintiff enters into a commercial litigation financing agreement, the existence and contents of the commercial litigation financing agreement are subject to discovery under the Indiana Rules of Trial Procedure by:**

(1) a party other than the plaintiff; or

(2) an insurer that has a duty to defend another party in the civil proceeding."

Delete page 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

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(Reference is to HB 1160 as introduced.)

JETER

Committee Vote: yeas 10, nays 0.

