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MEMORANDUM

To: House Committee on Judiciary
From: Office of Revisor of Statutes
Date: February 15, 2022
Subject: Bill Brief on HB 2694

HB 2694 enacts the third-party litigation financing consumer protection act to require regulation of litigation financing.

Section 1 names the act and provides the definitions used throughout the act.

Section 2 provides that a litigation financier shall not engage in a litigation financing transaction in Kansas unless the financier is registered as a litigation financier pursuant to this section. The secretary of state shall register such financier if they meet the requirements for registration and pay a \$100 filing fee. A litigation financier shall file with the secretary of state a surety bond of at least \$50,000.

Section 3 provides acts that a litigation financier is prohibited from engaging in. It also provides that a legal representative or medical provider for a consumer shall not have a financial interest in litigation financing or receive a referral fee from any litigation financier.

Section 4 provides that the terms of a litigation financing agreement shall be in a written contract. The bill provides for the disclosures that are required to be in such written contracts. If a consumer is represented by a legal representative, such representative shall acknowledge that they have not and will not receive or pay a referral fee. If a legal representative is a party to a litigation financing agreement, such representative shall share the agreement with the consumer.

Section 5 provides that a consumer or legal representative shall provide all parties to litigation with any litigation financing contract or agreement under which any person other than the legal representative has received or has a right to receive compensation or proceeds from the consumer contingent on the civil action. The existence of litigation financing is an allowable subject of discovery in all personal injury cases.

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Section 6 requires litigation financiers to file an annual report with the secretary of state and provides the requirements for such report. The secretary of state shall report to the House and Senate judiciary and commerce committees with a summary of the reports received. Such summary shall be posted on the secretary of state's website.

Section 7 provides that this act applies to any class action lawsuit. Class members shall be advised if the proposed class attorney has a legal or financial relationship with a litigation financier. This act does not apply to litigation financing provided to commercial enterprises unless the situation arises from a personal injury claim. A violation of this act shall make a litigation financing contract unenforceable.

If passed, this act would take effect on January 1, 2023.