



House Committee on Judiciary

Testimony in Support of House Bill 2694- Third party litigation financing requirements

Presented by Eric Stafford, Vice President of Government Affairs, Kansas Chamber

Tuesday, February 15, 2022

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large businesses of all industry segments across the state. We appreciate the opportunity to testify in support of House Bill 2694, which establishes parameters by which third-party litigation financiers may operate in the state, including disclosure of third parties with financial interest in litigation.

The U.S. Chamber Institute for Legal Reform (ILR) first published information on third party litigation funding (TPLF) back in 2009, but this practice was pretty limited to the country of Australia. However, a new niche market of hedge funds have been created for the purpose of investing in litigation in the outcome of lawsuits betting on their success and a financial return on their investment.

According to a 2020 publication from ILR, some estimate “that litigation finance is at least a \$10 billion industry.” This new industry has been called “thriving” due to the expansive growth of the practice of litigation financing. This type of practice opens up the door to opportunities for frivolous litigation. In short, these companies are acting as investors and base their decisions on their expected return on investment.

There are ethical questions that arise from this practice. TPLF encourages fee-sharing between lawyers and non-lawyers, and they undermine a party’s control over their lawsuit. The great thing about America’s capitalistic structure is these entities have the right to try and make money off of their investments, barring the ethical questions of whether they should or not. The Chamber introduced Senate Bill 152 last year to require any third-party litigation financing arrangement be properly disclosed to the defense that there is a third party with a financial interest in the outcome of the case.

According to ILR, “In 2018, Wisconsin enacted a comprehensive litigation funding disclosure requirement.¹⁴¹ The Wisconsin law provides that “a party shall, without awaiting a discovery request, provide to the other parties any agreement under which any person ... has a right to receive compensation that is contingent on and sourced from any proceeds of the civil action, by settlement, judgment, or otherwise.”

The U.S. District Court of Northern California adopted TPLF disclosure requirements for class action lawsuits in 2018, similarly followed by the New Jersey Federal District Court in 2021. To further curb efforts to fund frivolous litigation in Kansas, SB 152 allows for recovery of costs associated with responding to a subpoena. HB 2694 would require these entities to register with the Secretary of State in order to operate and finance Kansas litigation.

In closing, we ask for your support of House Bill 2694 to help protect against abuses in our state’s legal system. Thank you for allowing us to testify in support of House Bill 2694, and I am happy to answer questions at the appropriate time.