



House Committee on Judiciary

Testimony in Support of Senate Bill 54- Third Party Litigation Funding Disclosure

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

Tuesday, March 11, 2025

Madam Chair 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 Senate Bill 54, which requires disclosure of third parties with financial interest in litigation. As introduced, SB 54 contained the same language as House Bill 2510 from last year.

I am pleased to say, although amended in the Senate and significantly different than what the House voted 83-39 in support of in 2024, we were able to successfully reach agreement with opponents. The language in SB 54 currently reflects that compromise agreement.

Before getting into the issue itself, I would like to draw your attention to subsection (iii) starting on line 18 of page 3, through line 6 of page 4. This deals with a reporting requirement for the Judicial Council to study the issue of third-party litigation funding agreements. Since there is agreement with parties involved, we would ask the committee to remove this section from the bill. If the committee chooses to retain the judicial council reporting provisions, the language would need to be amended.

For background on the issue, 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 limited to the country of Australia. However, a new niche market of hedge funds has 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.” Estimates now state the industry has grown to more than \$15 billion. This industry has been called “thriving” due to the expansive growth of the practice of litigation financing. This type of practice opens 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, turning our judicial system into the stock market.

There are ethical questions that arise from this practice. TPLF encourages fee-sharing between lawyers and non-lawyers, and these agreements 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. However, what we’re asking in SB 54 is that this information be properly disclosed to the defense that there is a third party with a financial interest in the outcome of the case.

During testimony two years ago, a representative from Burford Capital said “It is very clear that funders do not control litigation. We do not control the day-to-day decisions, and we don’t control settlement decisions” (43 minute mark of 2/17/23 hearing)-

<https://www.youtube.com/watch?v=OBruig3VQDA&list=WL&index=1&t=1128s>.

However, in a March 2023 Wall Street Journal article, the article starts “In a notable twist, it {Burford} is now locked in its own litigation as it tries to block a settlement that one of its business clients wants” <https://www.wsj.com/articles/burford-capital-litigation-financing-sysco-lawsuit-boies-schiller-a4b593fb>.

Sysco food supplier partially funded a lawsuit using Burford as an investor in the case against food producers for price fixing. When Burford didn’t approve of the settlement terms Sysco was negotiating, according to the article, Burford sought to rewrite their contract with Sysco, directly contradicting statements made by their representatives before the Kansas Senate Judiciary Committee.

Action by other states and Courts

According to ILR, “In 2018, Wisconsin enacted a comprehensive litigation funding disclosure requirement. 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. Montana also passed disclosure requirements with more teeth than what is included in SB 54. Indiana and West Virginia have also passed TPLF disclosure requirements. Numerous other states are also considering legislation to add disclosure requirements on third party funders.

Why does this policy decision matter? In a December 2024 piece in the Wall Street Journal, *Nuclear Verdicts Driving up Costs of Doing Business*, (https://www.wsj.com/articles/nuclear-verdicts-driving-up-costs-of-doing-business-says-risk-management-societys-head-b8a401bd?st=UTA3kc&reflink=article_email_share) the Q&A with David Arick, president of the risk management society RIMS, read:

WSJ: *When you have a large verdict, are others benefiting apart from the alleged victim?*

Arick: *That winner of that lottery ticket, many times, is a firm that’s financing that litigation as an investment, and they’re looking for the potential for some kind of windfall investment return. That’s not really what most people would consider to be justice.*

I think it’s reasonable to ask for litigation funding to be disclosed in litigation, so that the actual parties to a given court case are known to everyone involved, including a potential jury that’s being asked to make a vote as to who should pay for what.

Senate Bill 54 represents a successfully negotiated bill between interested parties and offers a disclosure solution to protect against abuses in our state’s legal system. Thank you for allowing us to testify in support of SB 54, and I am happy to answer questions at the appropriate time.