



## Senate 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

**Monday, February 10, 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. SB 54 comes to you in a much different form than SB 74 and HB 2510 from the previous sessions, in that it reflects amendments achieved through negotiations in 2024 with the Attorney General's office who testified on the policy for the first time over concerns of the impact to non-profit or public interest litigation.

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 pretty 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=OBruiq3VQDA&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](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.*

Moving into the language in Senate Bill 54, this reflects last year's HB 2510 which passed the House by a vote of 83-39. The only difference in the language is removal of a 5-year sunset on the disclosure requirement and removal of the sunset of the judicial council reporting requirement. Since then, we have been asked by attorneys representing two non-profit interests to change the language throughout the bill on "third party agreements" to "third party litigation funding agreements." Additionally, at the end of our testimony are proposed changes brought to us by the Judicial Council on the sections impacting their obligation for legislative updates on TPLF practices in the state. We would ask the committee to consider adopting these amendments for clarification.

I will close with comments from a 60 Minutes episode which aired just before the start of the 2023 session.

*Transcript from 60 Minutes episode December 18, 2022:*

*But Maya Steinitz, a law professor at the University of Iowa, says there are ethics rules for lawyers, but not for these investors.*

*Maya Steinitz: The funders are not regulated. There's nothing precluding them legally from pressuring a client to settle. The rules of ethics are very clear that the lawyer has to abide by the wishes of the client. But human nature is human nature. There may be an inclination to be pulled towards the person who is paying.*

*Lesley Stahl: Why is this important? Why should someone out there who's not involved in a lawsuit care?*

*Maya Steinitz: For multiple reasons. First of all, there is this new industry and a new type of player, "litigation funders," who are reshaping every aspect of the litigation process - which cases get brought, how long are they pursued, when are they settled. But all of this is happening without transparency. So we have one of the three branches of government, the judiciary, that's really being quietly transformed. And there's -*

*Lesley Stahl: Very little oversight.*

*Maya Steinitz: Very little oversight.*

We believe Senate Bill 54 offers a simple 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.

**2024 SB 54 - Suggested amendments submitted by the  
Judicial Council. January 30, 2025**

**This subsection begins on page 3, line 10, of SB 54:**

*(e) When requested by the disclosing party, the court must issue an order to protect discovery of a third-party agreement from disclosure other than to the parties, the parties' counsel, experts and others necessary to the legal claim.*

*(C) Reporting of third-party agreements. (i) On and after July 1, 2025, any third-party agreement under which a person has a contractual right to receive, directly or indirectly, compensation that is contingent in any respect on the outcome of the claim must be reported to the judicial council within 45 days after the commencement of an action in any Kansas court in which such a third-party agreement exists or within 45 days after such third-party agreement is entered into, whichever is later. The judicial council must provide the person who reported such agreement documentation showing that such report was made. Any third-party agreement that is not reported pursuant to this subparagraph is void and unenforceable unless such agreement relates to an action described in subsection (b)(3)(B)(ii)(d).*

*(ii) The clerk of the supreme court shall prescribe a form for use under this subparagraph. Such form shall include a method of reporting whether the third-party agreement is a third-party agreement with a foreign person and any other information the clerk determines is necessary for the judicial council to complete the study required by subsection (b)(3)(D).*

*(iii) Reports received pursuant to this subparagraph shall be confidential and shall not be subject to the provisions of the open records act, K.S.A. 45-215, et seq., and amendments thereto. The provisions of this clause shall expire on July 1, 2030, unless the legislature reviews and reenacts this provision pursuant to K.S.A. 45-229, and amendments thereto.*

*(D) On or before ~~July 1, 2028~~ January 1, 2030, the judicial council shall ~~establish a committee to~~ study the issue of third-party litigation funding agreements and submit a report containing its conclusions and recommendations. ~~Such~~*

~~committee shall review all reports submitted pursuant to subsection (b)(3)(C) and any other information related to such agreements the committee deems necessary. Beginning on December 1, 2029, and each December 1 thereafter, the judicial council shall report to the chief justice of the supreme court, the attorney general, and the ~~house~~ standing committees on judiciary ~~and in the senate~~ and the house of representatives. ~~standing committee on judiciary on the topic of third-party agreements in Kansas and in other states and make~~ The judicial council's report shall include recommendations on the use of ~~such~~ third-party litigation funding agreements in Kansas and whether future reporting of such agreements would be beneficial. Beginning on January 1, 2031, and continuing each January 1 thereafter, the judicial council shall report the total number of reports received in the prior calendar year under subsection (b)(3)(C) to the chief justice of the supreme court, the attorney general, and the standing committees on judiciary in the senate and the house of representatives.~~

**CLEAN version of Judicial Council's suggested amendments to the above section:**

*(D) On or before January 1, 2030, the judicial council shall study the issue of third-party litigation funding agreements and submit a report containing its conclusions and recommendations to the chief justice of the supreme court, the attorney general, and the standing committees on judiciary in the senate and the house of representatives. The judicial council's report shall include recommendations on the use of third-party litigation funding agreements in Kansas and whether future reporting of such agreements would be beneficial. Beginning on January 1, 2031, and continuing each January 1 thereafter, the judicial council shall report the total number of reports received in the prior calendar year under subsection (b)(3)(C) to the chief justice of the supreme court, the attorney general, and the standing committees on judiciary in the senate and the house of representatives.*