



**KANSAS
TRIAL LAWYERS
ASSOCIATION**

To: Sen. Kellie Warren, Chair
Members of the Senate Judiciary Committee

From: Callie Jill Denton, Executive Director

Date: February 10, 2025

Re: SB 54 Concerning the code of civil procedure; relating to regulation of
litigation funding by third parties (OPPOSE) (WRITTEN ONLY)

I am submitting testimony on behalf of the Kansas Trial Lawyers Association in opposition to SB 54. On behalf of KTLA members, thank you for the opportunity to provide you with KTLA's concerns and to request that the committee not pass SB 54.

Kansas law permits discovery of any non-privileged matter that is relevant to the claims and defenses in the case. Current law also gives courts the ability to limit or deny discovery if it is excessive, burdensome, or not relevant to the dispute.

KTLA opposes SB 54 because it opens the door to the court's consideration of whether a financing agreement meets the definitions in the bill and is discoverable. Requiring disclosure of one party's litigation financing agreement to the opposing party creates an unlevel playing field. And SB 54 contains no protection from discovery for privileged and confidential information.

Litigation financing, meaning provision of capital to law firms as non-recourse investments in the outcome of the case, may be a business practice that is more usual in other states. It is not an arrangement that KTLA members engage in and does not appear to be prevalent in Kansas.

Litigation financing, meaning a loan to a plaintiff to pay personal household expenses while they await the outcome of their case, is also not regular in the experience of KTLA members. We understand that Kansas banking regulations have restricted the market in Kansas.

Plaintiffs in short-term financial need during the pendency of their case have the option to seek loans from family or friends, banks, or credit unions. They also may seek out payday lenders. Some KTLA members report that they advise their clients against seeking such loans because the lender may want the attorney to sign the loan agreement, which poses an ethical conflict with Rule 1.8(e) of the Rules of Professional Responsibility.¹ And paying back the interest rates may take a substantial amount of the client's recovery, leaving the client in a worse financial position.

KTLA opposes SB 54 because allowing discovery of litigation financial agreements puts the plaintiff at a strategic disadvantage and gives the defendant and their insurer information about plaintiff's financial position and willingness to settle. The personal financial information in a consumer agreement may be completely irrelevant to the arguments in the underlying case. But it is immensely valuable to large corporate defendants and their insurance companies whose goal is to settle claims for as little as possible.

Also, the information in a litigation financing agreement may contain attorney-client and other privileged or confidential information. SB 54 contains insufficient restrictions or guidance for judges to protect privileged information from discovery.

The Legislature has different, and better options to address litigation financing concerns than the one proposed in SB 54. Under current law a judge may review any issue with a litigation financing agreement *in camera* on the motion of either party. An *in-camera* review protects both confidential and privileged information too.

The Legislature could also direct the court by requiring an *in-camera* inspection of all litigation financing agreements. For example, in the multidistrict opioid litigation, the judge required the attorneys to disclose third party litigation financing to the Court and provide information, for *in camera* review, confirming that the funder was not controlling the litigation, influencing counsel's judgment, or creating a conflict of interest.

On behalf of the Kansas Trial Lawyers Association, thank you again for the opportunity to present KTLA's concerns. We respectfully request that the committee not pass SB 54.

¹ A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.