



Testimony before House Committee on Judiciary
HB 2694 - Third Party Litigation Financing Consumer Protection
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WEBEX Testimony
Opposition to the Bill

Mr. Chairman and members of the Committee

My name is Eric Schuller, and I am the President of The Alliance for Responsible Consumer Legal Funding (ARC).

The Alliance for Responsible Consumer Legal Funding (ARC) is a Trade Association that represents companies that provide financial assistance to consumers who have a pending legal claim, such as a car accident. The money that is provided to them is to be used solely for household needs, such as making the mortgage, car payments, and keeping the lights on, while their claim is making its way through the legal process.

The average amount that we provide a consumer is \$2,000.

None of the money that we provide to a consumer is used to pay for the litigation. In fact, in other states where we have passed legislation we specifically state that the funds cannot be used for that purpose.

ARC is not opposed to regulation of the industry; in fact, we welcome it. We just have some concerns with the this legislation as currently drafted and would like to work with the members to come to an agreement on proper regulation of the industry.

It is our understanding that the purpose of this legislation it to regulate the companies or industries that provide funds to pay for the litigation and pay for the associated litigation costs.

Unfortunately, the legislation as written is broad enough that it does encompass our industry that provides funds to a consumer for household needs. We hope our inclusion was unintentional.

Issues with the legislation

In the definition that is used in Section 5:

"Litigation financing" means the funding of litigation activities or related claims by an entity, such as an indemnitor or a liability insurer, other than the parties themselves, the parties' counsel or an entity with a



preexisting contractual relationship with one of the parties. "Litigation financing" includes the purchase of bills, accounts or liens or otherwise paying for or purchasing services related to claims or litigation.

If the following line was added to this it would exempt us from the bill. As I stated before, I do not believe we are the intended target of the legislation.

"Litigation financing" does not include funds provided to a consumer for individual or household expenses or any purpose other than funding the litigation or related claims.

Then in Section 6 add another clarification to the bill.

(6)...(B) "Litigation financing transaction" does not include:

- (i) Legal representation services provided to a consumer by a legal representative on a contingency fee basis or legal costs advanced by a legal representative when such services or costs are provided to or on behalf of a consumer by a legal representative in the dispute and in accordance with the Kansas rules of professional conduct for attorneys; or
- (ii) A transaction in which funds are provided to a consumer for individual or household expenses, or for any purpose other than funding the litigation or related claims.***

If these issues are not addressed and we are still in the legislation, then the following items are also of concern to us.

Under Prohibited acts:

(9) assign or securitize a litigation financing contract, in whole or in part;

- This provision cuts off capital to the companies and prevents them from getting money to put more money out.
- When a similar provision was passed and introduced in Tennessee the companies pulled out of the state until it was repealed and replaced with language that allowed the companies to operate in the state.
- We would be happy to supply that language.

New Sec. 5. (a) Except as otherwise stipulated by the court, a consumer or such consumer's legal representative shall, without awaiting a discovery request, provide to all parties to the litigation, including an insurer engaged prior to litigation, any litigation financing contract or agreement under which any person, other than a legal representative permitted to charge a contingent fee representing a party, has received or has a right to receive compensation or proceeds from the consumer that are contingent on and sourced from any proceeds of the civil action by settlement, judgment or otherwise.

(b) The existence of litigation financing, litigation financing transactions and all participants in such financing arrangements are permissible subjects of discovery in all personal injury litigation or matters arising out of personal injury.



Concerns with Section 5:

- **This provision puts the consumer at a disadvantage. It tells the other side that they are in a financial bind and had to go to outside resources to help them make ends meet while their case is making its way through the legal system.**
- **Similar language was passed in West Virginia and Wisconsin. As a result, Consumer Legal Funding as a non-recourse product is not offered in those states.**
- **This will likely be the same if passed in Kansas and there-by putting the consumer at a disadvantage.**
- **If a consumer received funds from another financial resource that would not have to be disclosed. Just this type of transaction.**

New Sec. 6. (a) Each litigation financier shall file an annual report with the secretary of state in a form and manner prescribed by the secretary in rules and regulations. Such report shall include, but not be limited to:

(1) For each person that directly or indirectly owns, controls, holds with the power to vote or holds proxies representing 5% or more of the voting securities of the litigation financier:

(A) The legal name and address of each person;

(B) if the person is an individual, such person's principal occupation and offices or positions held during the immediately preceding five years;

(C) if the person is an individual, any convictions of crimes other than traffic infractions during the immediately preceding 10 years; and

(D) if the person is not an individual, a report of the nature of the person's business operations during the immediately preceding five years, a narrative description of the business intended to be done by the person and a list of all individuals who are or who have been selected to become directors or executive officers; and

(2) for each litigation financing transaction entered in this state or involving a claim to be litigated in this state:

(A) The amount, date of payment, name and address of each person that received any amount of financing from such litigation financier during the previous calendar year;

(B) the amount, date of payment and source of payment for all proceeds obtained by the litigation financier during the previous calendar year from and judgment, award, settlement or verdict in a litigation financing transaction; and

(C) any other information required by the secretary of state.

(b) (1) The secretary of state shall report annually to the house of representatives standing committee on judiciary, the senate standing committee on judiciary, the house of representatives standing committee on commerce, labor and economic development and the senate standing committee on commerce, or any successor committees, with a summary of the reports received pursuant to subsection

(a). Such summary shall not contain any personally identifiable information of any consumer.

(2) The secretary of state shall publish the summary of reports described in paragraph (1) on the secretary of state's website. Nothing in this subsection shall affect the obligation to disclose litigation financing contracts or other agreements pursuant to section 5, and amendments thereto.



Concerns with Section 6:

- **This section on Annual Report should be stricken as it is not necessary and burdensome.**
- **In regard to the company information, this is information that should be collected when a company applies for registration and updated as needed or ownership changes.**
- **To have the company do this on an annual basis when nothing has changed is an undo burden on the company.**
- **There is no need for the State of Kanas to know about the financial needs of the consumers. This will give insight into the financial health of the citizens of the state that is not currently done or needed.**

As was stated earlier, the average amount that we provide a consumer is \$2,000. If any of you have been involved in any sort of litigation you know that \$2,000 will not cover a small portion of the needed amount to bring a case forward. That is why I believe that we are not the targeted industry for this piece of legislation, but the unintended recipient of it.

We are happy to work with the members of the committee in either amending us out of the bill and making it clear that it is intended for those companies that fund the litigation and not those who solely provide assistance to those who just need a little help while their case is pending. Or, we could work on perfecting this bill and address our concerns as currently drafted.

I thank you for your time and consideration and am happy to address any of your questions.

Eric Schuller
President