

**Testimony of Jack Kelly
American Legal Funding Association
Kansas House of Representatives
House Bill 2694
Committee on Judiciary
February 15th, 2022**

Chairman Patton, members of the Judiciary Committee, thank you for allowing me to address the committee. My name is Jack Kelly. I am the Managing Director of the American Legal Finance Association (ALFA).

By way of introduction, ALFA is a trade association consisting of 32 of the nation's leading consumer legal funding companies that do business throughout the United States. One of ALFA's first actions was establishing industry standards for the Consumer Legal Funding industry. The cornerstone of these best practices is transactional transparency and clear disclosure to consumers. As a result, all ALFA members ascribe to the ALFA Best Practices.

It is critical for the committee to know that ALFA members DO NOT PROVIDE FUNDS TO INDIVIDUALS FOR ANY COSTS, FEES, OR EXPENSES RELATED TO THE PROSECUTION OF LITIGATION. Therefore, a plaintiff can SOLELY use the funds provided by ALFA member companies for their personal life needs like rent, food, or other such expenses.

ALFA Best Practices 1) Prohibit any of the funds being used for the costs of the litigation or attorney fees 2) Prohibit the funding company from being involved in any decisions relating to the litigation 3) Prohibit funding companies from paying any referral fees 4) Prohibit funding companies using false or misleading advertising, and 5) Require attorney acknowledgment of all fundings.

I am here today to respectfully oppose House Bill No 2694 as written. This bill fails to address the needs of consumers that have a personal injury claim and may need funds to provide for their basic needs such as housing and living expenses. The adoption of this bill would eliminate the ability of funding companies to assist consumers who have been injured and unable to work through no fault of their own. As written, this legislation would eliminate the option provided through Consumer Litigation Funding. Injured persons who cannot rely on family and don't have access to bank loans could face foreclosure, eviction, or loss of their possessions, such as automobiles.

I want to begin by addressing misconceptions and misstatements that have been made about the consumer legal funding industry and the falsity presented that this legislation is about consumer protection.

First, consumer legal funding does not create or increase frivolous litigation. As I stated earlier, ALFA members DO NOT provide funds unless the plaintiff has a bona fide claim and is represented by an attorney and prohibits any of the funds to be used to pay attorney fees or any cost related to their case. These cases are already filed before a plaintiff seeks funds for their personal life needs. Funding a frivolous case is against the financial interests of a consumer legal funding company as they would lose the funds they provide to the consumer.

Second, Legal Funding enables a plaintiff to provide for life needs to prevent an eviction, foreclosure, or car repossession. For example, 78% of consumer legal funding is used to avoid foreclosure, nearly 7% for auto payments, and almost 10% for food. Consumer legal funding does not fund the lawsuit or pay for class actions.

Third, consumer legal funding enables a plaintiff to get a fair settlement, not more than they deserve. A plaintiff often settles their case on the first offer simply because they have no funds to pay their basic needs. Because consumers are faced with these financial challenges, the first settlement offer is invariably a "low ball" offer. Those advocating for this legislation want to eliminate these fundings because low or unfair settlements are more profitable. These individuals cannot say they want to eliminate consumer legal funding, so they tell you that this is about consumer protection. That is not true. This legislation is a Trojan horse that looks like consumer protection but is in effect a ban of this practice that will stop consumer legal funding in Kansas, which will only hurt Kansans. Do not be misled by their claims.

Fourth, consumer legal funding is nonrecourse, and the consumer only pays the monies back if they receive funds in their case. Consumer legal funding companies assume all the risk. These fundings are risky. 12 to 20 % of funded cases are lost or settle for substantially less than expected. If the plaintiff loses their case, the consumer owes nothing, and the legal funding company loses its money. Adjustments are made to the obligation if the case settles for substantially less than expected. A consumer cannot be required to pay back more than they receive in their case. Consumer legal funding is not a loan because a loan must be repaid. Therefore, consumer legal funding is a nonrecourse funding transaction and not a loan.

Fifth, if you adopt this legislation, Kansas consumers will be harmed. The proponents of this legislation will be the primary beneficiary because lowball/unfair settlements are more profitable than fair settlements. Consumer legal funding allows the consumer to get fair compensation.

If Kansas truly desires to create laws to provide consumer protection ALFA would welcome working with you to address your concerns. ALFA has led the charge in helping adopt sound consumer protections law in numerous states, including Indiana, Oklahoma, Utah, Nevada, Tennessee, Vermont, Ohio, Maine, and Nebraska.

So, what is so bad about this legislation? It's simple. Among other things included in this bill is a provision that prohibits a funding company from assigning or securitizing the funding transaction. If adopted as written, this would shut down all fundings in Kansas as it would prohibit funding companies from accessing any capital for the transactions. Plain and simple, it would shut off the spigot of funds for funding companies. That's the real intent of this legislation, not consumer protection. It's like saying you can have a car, but you can't have any gasoline to operate the vehicle.

Also included in this legislation is a provision that allows for the law to apply to a Kansan who filed an action in another state, in that state's court, under that state's law. Imagine if New York adopted a law that said they had jurisdiction over one of New York's citizens who filed a case in Kansas. That would establish a terrible precedent for Kansas if they adopted such language.

I ask you, Mr. Chairman, members of this committee, is that what Kansas wants? Do you want to prevent Kansans from choosing to decide if they need funds for their life needs to be able to get them? No, I think you want true consumer protection as states like Oklahoma and Utah have adopted. As written, this legislation is complex and warrants long and careful deliberation. ALFA and our members stand ready to work with the committee to adopt true consumer protection legislation.

Consumer legal funding provides consumers with a lifeline when they have nowhere else to turn. It enables a plaintiff to obtain the settlement they deserve and not be forced to accept an unfair offer. If you have questions or concerns about this industry, the ALFA members and I stand ready to work with you to address those concerns.

