

Testimony to the Senate Judiciary Committee in Opposition to SB152

February 14, 2022

Chair Warren and Committee Members:

Good morning, my name is Gary Barnett and I am the Executive Director and General Counsel at the International Legal Finance Association (“ILFA”) and I am presenting testimony in opposition to SB152. ILFA represents the commercial legal finance industry, which is entirely separate and distinct from consumer litigation funding. I would like to thank the members of this committee for allowing me to provide remarks on this bill and for their thoughtfulness on this issue.

I believe the legislation under consideration is well-intentioned. However, I respectfully suggest that it is an unnecessary and overly broad regulation that will adversely affect Kansas businesses and law firms by restricting their access to legal finance, which just like other types of finance, empowers businesses to invest in growth and hire more employees. **Moreover, if this bill is passed, Kansas would be the first state in the nation to enact a law that includes both forced disclosure of all litigation finance agreements and a cost-shifting mechanism in cases involving financing.**

Many of the concerns I have heard surrounding this legislation do not apply to commercial legal finance, which is a market-based solution to meet the needs of companies engaged in litigation domestically and around the world.

Our members are passive outside investors who have no control over the outcome of the litigation. These deals are typically in the form of multimillion-dollar nonrecourse investments involving businesses ranging from startups to Fortune 100 companies, as well as law firms of all types and sizes. A key distinction to keep in mind is that commercial funders make investments, not loans. There is no debt obligation, and therefore, clients who use legal finance do not have ongoing principal or interest payments.

ILFA’s members help businesses mitigate risk by providing needed financing. We finance significant commercial matters between businesses on both sides of litigation. The financing provided by ILFA members allows businesses, large and small, to maintain the necessary capital to invest in their growth—driving economic development and job creation in local communities. In a free market economy, parties are at liberty to contract and should be free to do so without being forced to disclose their confidential financial arrangements—particularly to an adversary in litigation.

ILFA does not have a blanket objection to tort reform—we are not in the tort business. However, the proposal under consideration today is not tort reform. It is an overly broad regulation that will prevent Kansas businesses and law firms from obtaining financing if, and when, they determine it is advantageous to them from a business perspective.

Thank you again for the time and for allowing me to participate today. I am happy to answer questions at the appropriate time Madam Chair, and I would be happy to provide additional information to you or your committee as needed should you have any further questions.

Gary Barnett
Executive Director: ILFA