

Senate Committee on Judiciary**Testimony in Support of House Bill 2510- Third Party Financing Disclosure****Presented by Eric Stafford, Vice President of Government Affairs, Kansas Chamber****Ryan Kriegshauser, Partner, Kriegshauser Ney Law Group****Thursday, March 21, 2024**

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. With me is Ryan Kriegshauser of the Kriegshauser Ney Law Group which has worked with the Kansas Chamber on numerous legal issues like the one at issue in HB 2510. We appreciate the opportunity to testify in support of House Bill 2510, which requires disclosure of third parties with financial interest in litigation. As introduced, HB 2510 reflects amendments based on feedback during the Senate hearing last year on Senate Bill 74. The amended language as the bill stands now reflects changes we worked through with the Attorney General's office as they had concerns over the impact on public interest and non-profit litigation which we will go through today.

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." This new 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 they 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 their investments, barring the ethical questions of whether they should or not. However, what we're asking in HB 2510 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 last year in this committee, 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>, also attached with our testimony).

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 last year before the Kansas Senate Judiciary Committee.

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 HB 2510. Louisiana passed legislation last year to be vetoed by their Democratic Governor. With a Republican now in office, that legislation is expected to move forward again in 2024 according to our national partners.

In the last two weeks, both Indiana and West Virginia have sent bills to their Governors for signature.

Indiana

[HB 1160](#)

- Prohibits funding by foreign entities of concern
- Prohibits sharing sealed or protected documents with funders
- Prohibits funder control of litigation
- Requires disclosure of existence of foreign funding
- Existence and contents of agreement are subject to discovery

Date	Chamber	Vote	Yea	Nay	NV	Abs	Total	Result
2/1/2024	House	Third Reading	96 (66R, 30D)	0	1	3	96 (Bipartisan)	Passed
3/4/2024	Senate	Third Reading	46 (37R, 9D)	2	1	1	48 (Bipartisan)	Passed
3/6/2024	House	Concur with Amendments	92 (64R, 28D)	0	1	7	92 (Bipartisan)	Concurred

West Virginia
[SB 850](#)

- Updates current consumer lending regulations to include commercial litigation funding
- Automatic disclosure to other parties of litigation funding agreement

Date	Chamber	Vote	Yea	Nay	NV	Abs	Total	Result
2/28/2024	Senate	Final Passage	33 (28R, 5D)	0	0	1	33 (Bipartisan)	Passed
3/9/2024	House	Final Passage	87 (76R, 11D)	11 (11R)	0	2	98 (Bipartisan)	Passed

As I mentioned at the beginning of our testimony, HB 2510 reflects new language based on testimony from the Attorney General's office with concern that the bill would negatively impact public interest litigation. In addition, the Kriegshauser Ney Law Group does public interest litigation and can also attest to the protections added into this bill. Through three weeks of discussions with the AG's office, we were able to amend HB 2510 in a manner that protects public interest legislation, which was never the intent of this legislation. We are truly seeking disclosure only for those third-party entities with a profit-driven financial interest in the outcome of the case.

Limitations on disclosure were established in the bill. Those include the political, ideological or social nature of the case, the likely balance of litigation resources between the parties disputing the discovery, whether the inquiry would be proportional to the needs of the case, and any other relevant information presented by parties disputing the discovery. Non-profit organizations or associations are not required to disclose members or donors.

HB 2510 was also amended to contain a sunset provision and reporting requirement for the Judicial Council to review the usage of third-party financing arrangements in Kansas, and report back to the legislature in between September and December 2028.

We thank the committee for the opportunity to discuss this issue and for allowing us to provide an update on changes made in the House Judiciary Committee. We are happy to answer questions at the appropriate time.